TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 433

WILLIAM E. LAMB, PETITIONER,

vs.

WILLIAM A. SCHMITT, RECEIVER, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 3, 1931

CERTIORARI GRANTED NOVEMBER 2, 1931

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(36,247)

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(ORIGINAL BILL No. 162-EQUITY.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DELTA DIVISION OF THE NORTHERN DISTRICT OF MISSISSIPPI.

WILLIAM A. SCHMITT, RECEIVER,
Plaintiff,
versus No. 162, In Equity.

WILLIAM E. LAMB,
Defendant.

ORIGINAL BILL OF COMPLAINT.

Plaintiff respectfully shows unto the Court the facts following, to-wit:

I.

Plaintiff is a resident and citizen of the County of Coahoma, State of Mississippi, and the Northern District of said State, and is the duly appointed, qualified, and acting receiver of said Court appointed in Cause No. 129 in Equity, styled: Sterling B. Cramer, Plaintiff, vs. Florence T. Holland, Defendant.

Defendant, William E. Lamb, is a resident and citizen of the City of Chicago, State of Illinois, and, therefore, plaintiff shows that plaintiff and defendant in this cause are citizens of different States, to-wit: plaintiff is a citizen of the State of Mississippi, and defendant a citizen of the State of Illinois.

II.

The jurisdiction of this Court is founded only on the fact that this action is between citizens of differ-

ent States, and plaintiff states the fact to be that there is involved in this controversy an amount, exclusive of interest and costs, in excess of Three Thousand ($3,000.00) Dollars.

III.

Plaintiff states that, under and by virtue of the terms of the decree rendered in said Cause No. 129, (reference to the record of said cause being made, and especial reference being made to the terms of the said decree whereby plaintiff was appointed and empowered, both by the terms of said decree and by law, to sue for and collect and receive the entire estate of Florence T. Holland, one of the defendants in said Cause No. 129.

Plaintiff states that, by virtue of the terms and provisions of said decree in said cause, and by virtue of the fact that the said estate of the said Florence T. Holland consisted entirely, as of the date of the filing of the bill in the said cause, to-wit: May 1st, 1928, of certain property, both real, personal, and mixed, described in the pleadings in said cause, which the said Florence T. Holland held on said date impressed with the trust arising by implication of law for the use and benefit of the creditors of the said W. P. Holland, cestui que trust under said trust so arising, it is now the duty and the obligation of the plaintiff to bring this suit to seek to recover the money and property hereinafter mentioned and described for the benefit of the said trust and in order that the same may be administered in accordance with the orders of this Court heretofore entered and hereafter to be entered in said Cause No. 129.

IV.

As disclosed by the Original Bill of Complaint in said Cause No. 129, the nature and object thereof was

a suit on behalf of the plaintiff therein, named for the use and benefit of himself and all other creditors holding like position, to obtain a decree of this Court adjudicating and determining that the entire estate of the said Florence T. Holland in said bill described was impressed with a trust as above stated because of the fact that the said estate was property and/or increment and income thereof which had theretofore been transferred and conveyed to her, the said Florence T. Holland, by her husband, W. P. Holland, with the actual and constructive intent of defrauding the creditors of the said W. P. Holland.

3 Plaintiff states that the allegations in said bill relative to the said estate of the said Florence T. Holland being impressed with the trust as aforesaid were true as stated in said bill, and have been solemnly adjudicated so to be true by a decree of this Court entered in said cause heretofore referred to.

V.

Plaintiff states that, upon the filing of said bill, all persons, and especially the defendant herein, became charged with constructive knowledge of the rights of the plaintiff in said cause, and such persons as might thereafter intervene therein in accordance with the orders of said Court, and plaintiff shows that any person, and especially the defendant herein, thereafter taking or receiving any part or portion of the said estate of the said Florence T. Holland, took the same impressed with the trust aforesaid, and with knowledge of the rights of the parties aforesaid, and with the duty and obligation upon his part to return the said property upon the due orders and judgments of this Court or any other Court of competent jurisdiction.

VI.

Plaintiff states that the said William E. Lamb is an attorney at law, heretofore and now engaged in the active practice of his profession in the City of Chicago, Illinois, and that, sometime during the summer of 1928, and after the filing of the bill in said Cause No. 129, was employed by the said Florence T. Holland to defend the said suit aforesaid. Plaintiff states that the said William E. Lamb accepted said employment and obtained, prior to the receipt of any monies as hereinafter set forth out of said estate, full and actual knowledge of the facts stated in said
4 Bill of Complaint, and of the actual facts relative to the transactions mentioned and described therein.

Plaintiff further states that, having such knowledge, both actual and constructive, the said William E. Lamb caused the said Florence T. Holland, between the dates of August 8th, 1928, and April 12th, 1930, to pay to him large sums of money in cash out of said estate, which said sums of money plaintiff alleges aggregate a total amount, of which plaintiff has actual knowledge of Seventy Thousand Three Hundred Eighty and 36/100 ($70,380.36) Dollars, as shown by itemized statement hereto attached, marked Exhibit "A", and made a part hereof; that the said sums were paid by the said Florence T. Holland to the said defendant under the guise of the payment to the said William E. Lamb of fees as an attorney for her defense in said Suit No. 129, but plaintiff states that the said Florence T. Holland was without right at law or in equity to pay the said sums out of the said funds constituting a trust, as aforesaid, and said defendant was without lawful right to accept the same, and that, in accepting the same, he, the said defendant, took the same impressed with the trust aforesaid.

Plaintiff states that other large amounts and sums of money have been paid to said defendant of which

the said Plaintiff has no actual knowledge, but the said defendant has full, actual, and accurate knowledge, and that this Court should order the taking and stating of an account between the plaintiff and the defendant in order that the exact amount of the funds so taken and abstracted by the defendant from said trust fund may be by this Court adjudicated and determined.

VII.

5 Plaintiff prays the issuance of process as provided by law, and, upon final hearing, that this Court order the taking and stating of an account between the plaintiff and the defendant of the sums so paid to said defendant by said Florence T. Holland, and that it be determined and adjudicated that the said funds so received by said defendant are trust funds as aforesaid, and that it be further decreed that the said sums of money so found be returned to the plaintiff to be dealt with by him in accordance with the orders and decrees of this Court in said cause No. 129.

Oath of the defendant to any answer he may file to this Bill of Complaint is expressly waived.

If plaintiff has prayed for improper relief, he prays for such other further and more general relief to which in equity he may be entitled.

As in duty bound, he will ever pray.

GREEN, GREEN & POTTER,
MAYNARD, FITZGERALD & VENABLE,
ROBERSON & COOK,
Solicitors for Plaintiff.

6 State of Mississippi,
County of Coahoma,
City of Clarksdale.

This day personally appeared before me, J. L. Roberson, one of the solicitors for the plaintiff in the

foregoing Bill of Complaint, who on oath states that the facts therein stated are true of his own knowledge.

J. L. ROBERSON.

Sworn to and subscribed before me on this the 30 day of April, 1930.

.....;
Notary Public.

7 EXHIBIT "A".

Aug.	8, 1928	$10,000.00
Sep.	8, 1928	550.68
Oct.	8, 1928	20.78
Dec.	14, 1928	146.55
Dec.	7, 1928	250.00
Mch.	5, 1929	3,750.00
Jun.	1, 1929	11,250.00
Oct.	1, 1929	10,000.00
Nov.	25, 1929	250.00
Dec.	13, 1929	25,000.00
Apr.	19, 1930	250.00
Dec.	30, 1929	666.66
Jun.	1, 1929	281.25
Mch.	5, 1929	46.87
May	11, 1929	68.70
May	24, 1929	68.70
Jun.	10, 1929	22.35
Sep.	3, 1929	29.10
Sep.	3, 1929	68.70
Sep.	19, 1929	10.73
Oct.	14, 1929	68.70
Oct.	26, 1929	36.35
Nov.	8, 1929	68.70
Nov.	8, 1929	258.36
Oct.	21, 1929	50.00
Nov.	5, 1929	25.00

Nov. 22, 1929	100.00
Nov. 25, 1929	72.00
Dec. 6, 1929	100.00
Dec. 13, 1929	65.00
8 Dec. 20, 1929	27.75
Feb. 3, 1930	3,865.93
Feb. 6, 1930	29.10
Feb. 19, 1930	100.00
Mch. 10, 1930	310.10
Apr. 9, 1930	711.17
Apr. 12, 1930	1,760.33
Total	70,380.36

Filed April 30, 1930.

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9 (ORIGINAL BILL—CAUSE No. 129 EQUITY.)

In the District Court of the United States for the Delta Division of the Northern District of Mississippi.

Sterling B. Cramer, Plaintiff,
vs. No. 129, in Equity.
Florence T. Holland, Planters National Bank of Clarksdale, Peoples Bank of Jonestown, Planters Trust & Saving Bank, Bank of Lula, Progressive State Bank, Bank of Hollandale, Paul Holland, Mary H. Hays, Ruby Hays Thompson, Planters Manufacturing Company, Bank of Ruleville, F. M. Owens, L. C. Townes, Defendants.

Comes Sterling B. Cramer, a resident citizen of the City of Chicago, Cook County, State of Illinois, hereinafter called plaintiff, in this, his bill of complaint in

equity, as against Florence T. Holland, a resident citizen of Clarksdale, Coahoma County, Mississippi; Planters National Bank of Clarksdale, a banking association organized under and by virtue of the Acts of Congress of the United States of America of June 20th, 1874, with domicile in Clarksdale, County of Coahoma, State of Mississippi; and the Peoples Bank of Jonestown, a banking institution organized under the laws of Mississippi, domiciled at Jonestown, Second Court District, Coahoma County, Mississippi; the Planters Trust & Savings Bank, a banking institution organized and existing under the laws of the State of Mississippi, domiciled at Clarksdale, Second Court District, Coahoma County, Mississippi; the Bank of Lula, a banking institution organized under the laws of the State of Mississippi, domiciled at Lula, Mississippi, Second Court District, Coahoma County; the Progressive State Bank, a banking institution organized under the laws of the State of Mississippi, with domicile at Tutwiler, Tallahatchie County, Mississippi; the Bank of Hollandale, a banking institution organized under the laws of the State of Mississippi, with domicile at Hollandale, Washington County, Mississippi; Paul Holland, Mary H. Hays and Ruby Hays Thompson, all resident citizens of Hollandale, Washington County, Mississippi; the Planters Manufacturing Company, a corporation organized under the laws of the State of Mississippi, domiciled in the Second District of Coahoma County, Mississippi; the Bank of Ruleville, a banking institution organized and existing under the laws of the State of Mississippi, with domicile at Ruleville, in Sunflower County, Mississippi; F. M. Owens, a resident citizen of the First Court District of Coahoma County, Mississippi; and L. C. Townes, a resident citizen of Clarksdale, Second Court District of Coahoma County, Mississippi; all of said parties defend-

ant being resident citizens of the Delta Division of the Northern District of the State of Mississippi for the holding of United States Courts.

I.

Plaintiff alleges that this is an action in equity by the plaintiffs, a resident citizen as aforesaid of the State of Illinois, on the one part, and the
11 defendants, all resident citizens of the State of Mississippi, having their domicile and residence within the Delta Division of the District Court of the United States for the Northern District of Mississippi; and that the amount involved herein is in excess of $5,000.00, exclusive of interest and costs; that this cause of action is by an assignee and owner of a judgment duly transferred to him by the Chemical National Bank, a banking association with domicile and with resident citizenship in the City of New York, State of New York, assignor and original judgment creditor, as will be hereinafter shown, and that the assignor and assignee, both before and since said assignment, are non-residents of the State of Mississippi, and that diversity of ctizenship as between both assignor and assignee and all of the defendants existed both before said assignment and since said assignment, and now exists.

II.

The Chemical National Bank, aforesaid, on the 20th day of October, 1925, as appears at Minute Book 4, page 36, of the Minutes of the District Court of the United States for the Delta Division of the Northern District of Mississippi, obtained in cause No. 153 at Law a judgment against W. P. Holland, of Clarksdale, Miss., said Holland being a resident citizen of the Delta Division of the Northern District of

Mississippi for the holding of United States Courts aforesaid, for the benefit of said Chemical National Bank, being a resident citizen as aforesaid with domicile in the City of New York, State of New York, for the principal sum of $36,632.78, a copy of which judgment is attached hereto, marked Exhibit "A" and prayed to be made a part hereof as if fully copied herein.

III.

Thereafter, plaintiff alleges that the said Chemical Bank caused an execution to be issued on said judgment as against the said W. P. Holland, but that the marshal has returned said execution "Nulla Bona", not having found anything belonging to the said W. P. Holland, upon which said execution could be levied, copy of said execution, with return thereon, being herewith attached, marked Exhibit "B" and prayed to be made a part hereof as if fully copied herein.

IV.

Plaintiff alleges that on the 31st day of May, 1928, the said Chemical National Bank of New York, for value received, assigned to the plaintiff the said above named judgment by an assignment and transfer in writing, copy of which assignment is attached hereto marked Exhibit "C" and prayed to be made a part hereof as if fully copied herein, and plaintiff is now the owner of said judgment and all rights, both legal and equitable, thereunder.

V.

Plaintiff now shows the Court that W. P. Holland is, and has been for more than fifteen (15) years last past, the husband of the defendant, Florence T. Hol-

land, and that the said W. P. Holland is indebted to the plaintiff in the sum hereinbefore set forth; that the said W. P. Holland is now insolvent.

13 Plaintiff further shows that for more than twenty years prior to June 19th, 1922, the said W. P. Holland was connected with a banking institution formerly existing in this county known as the Planters Bank, Clarksdale, Mississippi, and that for more than twelve years prior to the year 1920, said W. P. Holland was the President of said bank, and, as such President, had sole charge of the affairs, and operation thereof; plaintiff further shows that the said Holland in his managing and control of the affairs of the said bank, and of his own affairs, was a highly successful business man;

Plaintiff further shows that during the year 1920, and for many years prior thereto, the said Holland owned or controlled a majority of the stock in the Planters Bank, which stock plaintiff alleges on information and belief, to have been highly valuable stock at said time, worth upon the open market in excess of Three Hundred Dollars ($300.00) per share, and the holdings of the said Holland being worth upon the market in excess of Fifty Thousand Dollars ($50,000.00).

Plaintiff further shows that in addition thereto the business activities of the said Holland in connection with the operation of said Planters Bank, he, the said Holland, for many years prior to the year 1920, was engaged in various and sundry investments, stock operations and other business enterprises not necessary here to detail, except that plaintiff shows that during said period prior to 1920, the said Holland was commonly known as a large operator upon the New York and Chicago Stock Exchange and the New Orleans and New York Cotton Exchanges and the Chicago Grain Exchange, being engaged in operations upon all of such exchanges of buying and selling stocks

and bonds, cotton and grain and other commodities;

14 Plaintiff shows that during said period prior to the year 1920 said W. P. Holland was, as aforesaid, highly successful in his ventures and operations upon the several exchanges mentioned herein and by reason of his industry and foresight, acquired a vast amount of property which should be subjected to the debts of the said Holland by the decree of this Court; plaintiff shows that in addition to the activities of the said Holland upon the said exchanges, he was connected with various and sundry local banking and other institutions organized for profit, and in each and all such institutions with which he was connected, he exercised the control thereof; plaintiff further shows that up to said year 1920, the vast majority of the property of the said Holland was invested in the stocks and bonds and other negotiable securities easily transferrable by indorsement and delivery, and that he had not to any appreciable extent, acquired holdings of lands in this and other counties of the Mississippi Delta; plaintiff alleges upon information and belief that at the beginning of said year 1920 the said Holland was an immensely rich man; because, as aforesaid, of his industry and ability and that the total aggregate of his holdings and property amounted to more than Three Million Dollars ($3,000,000.00) in excess of his liability, which said property, as aforesaid, was invested in the stocks of sundry local corporations to some extent, and most largely invested in the stocks of great industrial corporations, whose stocks and bonds are commonly sold upon the said Exchanges; plaintiff is unable to state with any degree of accuracy definitely the amount and number of shares of stocks owned by said Holland in the several corporations in which, during the time prior to 1920, he had his said immense fortune invested.

VII.

Plaintiff further shows that during the period of time following the opening of the great war in Europe, a period of war inflation opened in this country; that prices of all products and stocks were inflated, and that after the signing of the Armistice ending hostilities in said War in November, 1918, there swept over this Country what is known as the War Boom;

Plaintiff further shows that the community surrounding the City of Clarksdale was in the midst of said War boom and that prices of lands and the agricultural products produced in the Mississippi Delta advanced to almost unbelievable heights; that during all of said period, the said Planters Bank vastly extended its obligations in and around Clarksdale, Mississippi, and extended its loans to its borrowing customers to tremendous sums; that there was feverish activity in the purchase and resale of lands in the Mississippi Delta; that lands advanced from a value of approximately Fifty Dollars ($50.00) per acre to Two Hundred Dollars ($200.00) and Three Hundred ($300.00) Dollars per acre; plaintiff shows that it was necessary for the said Planters Bank and the said Holland in financing and furnishing the monies necessary to carry out the transactions of its customers in the purchase and sale of lands, to procure monies from foreign sources, including banks located in New York, Chicago, and other Metropolitan cities of this country; and plaintiff shows that said monies were procured by the pledge by said Planters Bank of its credit and bills receivable as collateral thereto, and that said indebtedness of said Planters Bank increased to its said several creditors so that during the first part of the year 1920, the said Planters Bank was indebted to its several creditors in an aggregate amount in excess of Fourteen Million ($14,000,000.00) Dollars; plaintiff fur-

ther shows that this boom referred to following the Great War burst in the first part of the year 1920 and that the conditions become gradually more serious as said year progressed; that said Holland, as the President and as a Director of the said Planters Bank, realized in the fore part of the year 1920, that the said Bank would not be able to withstand the shock of deflation and realized that he was personally liable to the several creditors of the Bank for the debts due them, because of the mismanagement of the affairs of said Bank; said Holland further realized that unless he should take some false and fraudulent means and procure by some means the transfer of his vast holdings of property, the same would become subjected to sale for the payment of the debts and liabilities as aforesaid of said Holland; and especially plaintiff's debt; plaintiff also shows that at said time the said Holland realized that in addition to the sundry liabilities that he then owed to the several creditors of said Planters Bank, that he would be called upon by those banks holding the debts and obligations of the Planters Bank to personally guarantee and underwrite the payment of such obligations and that also in order to keep the said Bank operating during the year 1920 it would be necessary that he pledge his personal credit in order to borrow monies from persons and corporations to be used by him in connection with the affairs of said Bank, and at said time plaintiff alleges that also said Holland realized that unless some steps were taken that his said vast fortune might be consumed in the repayment of such obligations then existing and which might necessarily arise out of the condition then facing the said Holland, but that judg-
17 ments might and would be taken against him on his indebtedness.

VIII.

Plaintiff shows that with the circumstances as then existing, the said W. P. Holland and defendant, Flor-

ence T. Holland, then and thereupon conceived a scheme and entered into a conspiracy whereby they would transfer and place all of the property then owned by said W. P. Holland nominally in the name of the defendant, Florence T. Holland, and thereby place the same beyond the reach of your plaintiff and the other creditors of the said Holland.

Plaintiffs shows that during the month of January, 1920, the said Holland was the owner of a great number of shares of stock in excess of Thirty Thousand in one of the great industrial corporations of this country known as the Texas Oil Company; that in pursuance of the scheme aforesaid and in order to place the property beyond the reach of the creditors of said Holland, he, the said Holland, caused to be sold upon the said New York Stock Exchange a great number of his shares of stock in the said Texas Oil Company, and plaintiff shows that during the month of February, 1920, he, the said Holland, received from the proceeds of the sale of his stock in the said Texas Oil Company an aggregate amount of One Million One Hundred Thirty-three Thousand Four Hundred Ten and 34/100 Dollars ($1,133,410.34); that said stock as aforesaid was sold through the brokers of the said Holland upon the said New York Exchange and the proceeds of such sale were remitted to the said Holland in Clarksdale, in this County, and were deposited by said Holland in the said Planters Bank to the credit of said Holland; plaintiff shows, however, that this constituted relatively a small part of the vast estate of said Holland;

Plaintiff further shows that the manner and means of the transfer of the said part of said property of the said Holland from himself to the defendant, Florence T. Holland, consisted in this:

That the said Holland did cause the said Planters Bank to transfer and sell sundry of its bills receiv-

able, being the notes and obligations of its customers, payable to it, ostensibly to the defendant, Florence T. Holland, but that the purchase price of said notes would be paid by the said W. P. Holland. So plaintiff shows that on May 19th, 1920, as an instance of the effectuation of said scheme and conspiracy, the said Holland caused the said Planters Bank, he being the President thereof, and in control of the affairs of the same, ostensibly to transfer and sell to the defendant, Florence T. Holland, sundry of the said bills receivable of the said Bank of the value of and the purchase price of One Hundred Eighty-one Thousand Two Hundred Forty-nine and 36/100 ($181,249.36) Dollars; that likewise, on May 20th of said year, said Holland caused the said Bank likewise ostensibly to sell to the said Florence T. Holland sundry other bills receivable of the said Planters Bank of the value of and at the purchase price of Four Hundred Twenty-five Thousand Seven Hundred Ten and 30/100 Dollars ($425,710.30); plaintiff shows that the purchase price of said receivables was all paid out of the said account and deposit of the said W. P. Holland, and that the nominal transfer thereof to the name of the defendant, Florence T. Holland, was made with the intent, and has had the effect of hindering, delaying and defrauding creditors in the collection of the just indebtednesses due to them; plaintiff further shows

19 that during the months of July, August, September, October, November, December, of 1920, and during the month of January, 1921, the said Holland continued to cause the said Bank ostensibly to transfer sundry of its bills receivable to the said defendant, Florence T. Holland, for the purpose aforesaid, and under the conditions aforesaid so that plaintiff shows that during said period of time the said Holland caused the said Bank ostensibly to sell to the said defendant, Florence T. Holland, an aggregate of its bills receivable of One Million Fifty-

seven Thousand Five Hundred Eighty-nine and 63/100 Dollars ($1,057,589.63); plaintiff shows that ostensibly the said Florence T. Holland proceeded to collect and/or sell the said receivables and convert the proceeds of the collection and/or sale of the same to her individual use and benefit, but plaintiff shows in equity that the proceeds of said fraudulent transfers and the re-investment thereof and the increment therefrom are subject and liable to the debts and obligations in this Court of the said W. P. Holland.

Plaintiff further shows that although the said W. P. Holland owned comparatively a small amount of real property within the jurisdiction of this Court, that at said time, he, the said Holland, did own several pieces of real property within said jurisdiction, of a highly valuable nature, and that the nominal transfers of said property to the said defendant, Florence T. Holland, was a part and parcel of the said scheme and conspiracy to divest the said Holland of all and every kind and character of property, subject to its debts and obligations, and thereby hinder, delay and defraud the creditors of the said Holland; plaintiff shows that in pursuance of said scheme and conspiracy, on May 1st, 1920, the said W. P. Holland made, executed and delivered to the defendant, Florence T. Holland, a deed of gift, which deed is recorded in Book 63, at page 142 of the land deed records of Coahoma County, Mississippi; plaintiff shows that by said deed of conveyance for the consideration of natural love and affection, the said Holland conveyed to the defendant, Florence T. Holland, the following described property in Coahoma County, Mississippi, to-wit:

That certain tract of land lying along the right bank of the Sunflower River, described as follows: Beginning at a store on the west boundary line of Section Fourteen, eight hundred sixty feet due north of the

corner of Sections Fourteen, Fifteen, Twenty-two and Twenty-three; thence south sixty degrees forty-five minutes east, three hundred forty-six feet to a point, which is the point of beginning of the following described land; thence due north three hundred twenty-five feet to the center of Sunflower River; thence eastwardly following the thread of the center line of said river to the point of intersection of said center line with the north line of Second Street of the City of Clarksdale; thence south seventy-five degrees thirty minutes west two hundred eighty feet to the southeast corner of the Fire Station lot on the North side of Second Street; thence north fourteen degrees and thirty minutes west, thirty feet to the northeast corner of said lot; thence south seventy-five degrees and thirty minutes west and parallel to the north line of said Second Street sixty feet to the northwest corner of said Fire Station lot on the east line of Dorr Avenue; thence north thirty-one degrees and
21 fifteen minutes west along the east line of Dorr Avenue, five hundred feet to a point; thence north forty-two degrees and forty-five minutes west, three hundred feet on the east line of Dorr Avenue; thence north thirty degrees and fifteen minutes west one hundred forty feet on the east line of Dorr Avenue; thence north one degree and forty-five minutes two hundred feet to a point on the east line of Riverside Avenue; thence nine degrees and forty-five minutes east one hundred feet to a point on the east line of Riverside Avenue; thence north twenty-three degrees fifteen minutes east one hundred feet to a point on the east line of Riverside Avenue; thence north four degrees and forty-five minutes east five hundred eighty feet to a point on the east line of Riverside Avenue; thence north twenty degrees and forty-five minutes west one hundred feet to a point in the east line of Riverside Avenue; thence north fifty-five degrees and fifteen minutes west one hundred feet to

a point on the north side of Riverside Avenue; thence north fifty-six degrees and fifteen minutes west one hundred sixty feet to a point on the north side of Riverside Avenue; thence north seventy degrees and fifteen minutes west seven hundred feet to a point on the north side of Riverside Avenue; thence north seventy-nine degrees and fifteen minutes west one hundred feet to a point on the north side of Riverside Avenue; thence north seventy-seven degrees and fifteen minutes west one hundred feet to a point on the
22 north side of Riverside Avenue; thence north seventy-eight degrees and forty-five minutes west one hundred seventy feet to a point on the north side of Riverside Avenue; thence north seventy-eight degrees and fifteen minutes west six hundred feet to a point; on the north side of Riverside Avenue; thence north eighty-one degrees and fifteen minutes west two hundred seventy feet to a point on the north side of Riverside Avenue; thence south three degrees and twenty-five minutes west one hundred twenty feet to a point on the west side of Riverside Avenue; thence south twenty-five degrees and forty-five minutes west, three hundred feet to a point on the west side of Riverside Avenue; thence south thirty-four degrees and forty-five minutes west three hundred feet to a point on the west side of Riverside Avenue; thence south thirty-six degrees and thirty minutes west two hundred forty feet to a stake on the east side of Oakhurst Avenue; which is also the point of beginning. This tract contains 41.51 acres, of which 11.71 acres is situated in Lot Twelve of Section Fourteen, 23.36 acres situated in Lot Thirteen of Section Fourteen, and 6.44 acres situated in Lot Two of Section Twenty-three, all in Township Twenty-seven, Range Four, West.

All Lot Six, containing 38.41 acres and all that part of Lot Nine, lying north of the center line of Mill Bayou; containing 29.21 acres, except five acres here-

tofore conveyed to Coahoma County on May 20th, 1909, by deed of record in Book 24, at page 301, of the Record of Land Deeds in the office of the Chancery Clerk of said County at Clarksdale, Mississippi, and except three acres conveyed to M. K. Wildberger by deed dated November 21st, 1919, and not yet of record, which said three acres is described as follows: Beginning at an iron stake in the line dividing Sectional Lots Eight and Nine, about two hundred feet north of the center line of Mill Bayou; thence north along the dividing line between said Lots Eight and Nine a distance to give a frontage of two acres to an iron stake; thence west a distance to give a depth of 1½ acres to an iron stake; thence south parallel to said dividing line between said Lots Eight and Nine a distance to give a length of two acres, to an iron stake; thence east and perpendicular to the dividing line between said Lots Eight and Nine to the iron stake at the point of beginning. The total acreage herein conveyed being 67.62 acres and all being in Section Fourteen, Township Twenty-seven, Range Four West; also three acres in the southeast corner of Lot Nine north of Mill Bayou, in Section Fourteen, Township Twenty-seven, Range Four West, more particularly described as follows: Beginning at a stake in the line dividing Lots Eight and Nine about two hundred feet from the center of Mill Bayou and north of said Bayou; thence north along the dividing line between said Lots Eight and Nine a distance to give a frontage of two acres to an iron stake; thence west a distance to give a depth of 1½ acres to a stake; thence south parallel to the dividing line between Lots Eight and Nine aforesaid to a stake, a distance to give a depth of two acres; thence east and perpendicular to the dividing line between Lots Eight and Nine to the point of beginning; also the following described property situate in the City of Clarksdale,

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County and State aforesaid, to-wit, Lot One and the eastern half of Lot Two, Lot Six and the eastern half of Lot Five, all in Block Sixteen in Oakhurst Subdivision; Lots Numbers Three and Four and the East Half of Lot Five and the West Half of Lot Two of Block Sixteen of Oakhurst Subdivision. Lots Fifteen, Sixteen, Seventeen and Eighteen in Block Fifteen in the Dolan and Peacock Oakhurst Addition. Lots One and Two in Block Nine in the Oakhurst Subdivision. A copy of which said deed is being filed herewith, marked Exhibit D, and made a part hereof; plaintiff shows that said property is, as aforesaid, highly valuable property, located within the corporate limits of the City of Clarksdale, and was, and is now, of the value in excess of Forty Thousand ($40,000.00) Dollars;

Likewise, plaintiff shows that on September 27th, 1920, the said W. P. Holland, in pursuance of the said scheme and for the purpose aforesaid, purported to convey to the said Florence T. Holland by deed recorded in Book 63 at page 328 of said records, the following described land in Coahoma County, Mississippi,. to-wit:

Undivided one-half interest in all of Section Seven and the West half of Section Eight, Township Twenty-six, Range Four, West, and the East Half of the Southeast Quarter of Section One, and the [illegible] Half of the East Half of Section Twelve, Townsh[illegible] Twenty-six, Range Five, West, commonly known and referred to as the Harahan Plantation, all lying and being in the Second Judicial District of Coahoma County, Mississippi, and comprising in all 1192.71 acres, less 5.02 acres heretofore conveyed as right-of-way of the Yazoo & Mississippi Valley Railroad Company and less eight acres lying south of the county road running east and west and in the southern extremity of the aforesaid property

which is the land claimed by J. W. Cutrer and the land herein conveyed, comprising in all 1179.71 acres, more or less.

A copy of said deed is filed herewith and made a part hereof, marked Exhibit "E" and prayed to be made a part hereof; plaintiff shows that the recited consideration for said conveyance was love and affection, and that the said interest in said property conveyed by said deed was extremely valuable, being of a value in excess of Forty Thousand Dollars ($40,000.00), which said interest plaintiff shows the said defendant, Florence T. Holland, has converted and used for her own use and benefit.

Plaintiff also shows that likewise on April 28th, 1924, in pursuance of said scheme and conspiracy, the said W. P. Holland, by deed recorded in Book 76, at page 441 of said record, sold and conveyed to the said defendant, Florence T. Holland, the following described real property in Coahoma County, Mississippi, to-wit:

Lots numbered One to Ten, inclusive, in Block Eleven of the Dolan and Peacock Oakhurst Addition to the City of Clarksdale, Coahoma County, Mississippi.

A copy of which said deed is filed herewith, marked Exhibit "F" and made a part hereof; plaintiff further show that the consideration recited in said deed last aforesaid is One Dollar ($1.00) paid, which
26 plaintiff shows was a mere nominal consideration and not a valuable one, and that no consideration whatsoever was paid for said deed;

Plaintiff further shows that the real property sold and transferred by the said W. P. Holland to the said Florence T. Holland by the several conveyances heretofore mentioned consisted of all the real property within the jurisdiction of this Court owned by said

W. P. Holland, but plaintiff shows that in addition thereto, the said W. P. Holland owned sundry promissory notes executed by sundry persons, payable to said Holland and secured by liens upon real property in this County, and that the said Holland in order to completely effectuate his said scheme and purpose, transferred all of said notes to the said Florence T. Holland under circumstances similar to those heretofore recited;

Plaintiff shows that on October 15th, 1921, the said Holland being then the owner of ten notes of Two Thousand Five Hundred Dollars ($2,500.00) each, executed by W. K. Herrin and W. K. Herrin, Jr., payable to said Holland, and secured by deed of trust recorded in Book "55" at page 402 of said records, entered upon the margin of said record a notation reciting the transfer of said notes to the said defendant, Florence T. Holland, on February 2nd, 1921, which said notation is duly attested by Y. E. Howell, Clerk; plaintiff shows that said notation recited the receipt of value for said assignment, but that as a matter of fact no value was paid, and that said last mentioned assignment aforesaid was merely colorable and for the purpose aforesaid.

Plaintiff also shows that on July 20th,
27 1921, the said W. P. Holland purported to convey to said Florence T. Holland by deed recorded in Book 13; at page 43 of the Land Deed Records of this County, at Friars Point, Mississippi, to-wit:

One-fourth undivided interest in all that part of Sections Five, Six, Seven and Eight, Township Twenty-six, Range Six, lying North of the Yazoo & Mississippi Delta Levee and between the levee and the river, also all that part of the North Half of Section Twelve and that part of the Southeast Quarter of Section Twelve, West of the Yazoo & Mississippi Levee,

and all that part of the South Half of Section Thirteen West of said Levee and all that part of the Northeast Quarter of Section Thirteen between the levee and Lake Charles, and all of Southwest Quarter of the Northwest Quarter of Section Thirteen; all of the East Half of Section Fourteen and the Northeast Quarter of the Northwest Quarter of Section Fourteen; all of said lands in Section Twelve, Thirteen and Fourteen, being in Township Twenty-six, Range Seven, West, Coahoma County; also that part of the West Half of Section Twenty-four and that part of the West Half of Section Twenty-five, and that part of Section Thirty-six, except the Southwest Quarter thereof, lying west of the right-of-way of the Mississippi Levee; also all of fractional Section Thirty-five and the Southeast diagonal Half of Section Twenty-six, Range Seven, West, Bolivar County, Mississippi, there being embraced in the entire tract 2220 acres, more or less, being a part of what was formerly known as the Eldridge Plantation, conveyed by
28 United States Lumber & Cotton Company to Oscar Johnston.

A copy of said Deed is filed herewith, marked Exhibit "G" and made a part hereof; plaintiff shows that the consideration recited in said deed is the sum of Five Thousand ($5,000.00) Dollars but plaintiff shows that no such consideration was ever paid and that the same was totally and wholly voluntary and was made as aforesaid with the intent to effectuate the scheme and conspiracy herein outlined.

IX.

Plaintiff shows that in addition to the properties heretofore mentioned, transferred by said W. P. Holland, in pursuance of said scheme and conspiracy, the said W. P. Holland owned other vast holdings as

aforesaid in corporations, evidenced by the shares of stock of said corporations, but plaintiff is not able to state with accuracy the kind and number of sale; plaintiff charges on information and belief, however, that the stocks so owned were of the value in excess of One Million ($1,000,000.00) Dollars and that the same were transferred by simple indorsement and delivery, without consideration, by the said W. P. Holland to the said Florence T. Holland, and thereafter such transfers were entered upon the books of such corporations; plaintiff further shows that he is advised and so believes that at said time, to-wit, during the year 1920, the said W. P. Holland had sundry accounts and deposits with banks and other persons, firms and corporations, non-resident to this State, and that he, in pursuance of said scheme, proceeded to transfer and deliver or assign such accounts and debts of such firms, persons and corporations nominally to the name of the defendant Florence T. Holland.

All of this was done, as plaintiff alleges, in pursuance of the said scheme and conspiracy and with the effect of accomplishing the purpose of hin-
29 dering, delaying and defrauding creditors in collection of their just debts and obligations.

Plaintiff shows that by means of the several transfers herein mentioned, that the said W. P. Holland transferred, without consideration, to the defendant, Florence T. Holland, his whole estate, including all of his property, both real, personal and mixed, and thereby, as aforesaid, nominally placed the same beyond the reach of creditors of said W. P. Holland.

X.

Plaintiff shows that since the years 1920 and 1921, the defendant, Florence T. Holland, being nominally the owner of the property so transferred to her by said W. P. Holland, has nominally proceeded to transact

business and invest and re-invest the proceeds of the property so transferred to her. As a matter of truth and in fact, plaintiff alleges that all of such transactions, as will be hereinafter mentioned, have been handled exclusively through the instrumentalities of the said W. P. Holland and that in law, and in this a Court of equity, such transactions have really been W. P. Holland, doing business and transacting business under the assumed name of Florence T. Holland; that in such manner, the said Florence T. Holland has operated upon the stock and grain exchanges heretofore mentioned, has acquired vast amounts of real property in this, and adjoining counties, has become the owner of the large amounts of stocks in the corporations made defendants hereto; that the monies necessary to carry on all of such business operations and transactions were all acquired through the transfers heretofore mentioned and that such transactions hereinafter mentioned have been done and had with the purpose and intent of further hindering, delaying and defrauding creditors in the collection of their just debts and obligations, and that the properties hereinafter mentioned as nominally resting in the name of the defendant, Florence T. Holland, are simply the result of the reinvestment of the property of W. P. Holland and are subject to the debts and obligations of the said W. P. Holland. Plaintiff shows that the proceeds of the said fraudulent transfers hereinbefore mentioned have been intermingled and commingled with such property as might have been owned by the defendant, Florence T. Holland, prior to said transfers, in such a manner that it is impossible to segregate one from the other, and plaintiff shows that he is entitled to subject not only the properties transferred by such conveyances hereinbefore mentioned to the payment of his debts, but in addition thereto, all of the increment and interest and enhancement in value thereof.

Plaintiff shows that with the proceeds of said transfers nominally the defendant, Florence T. Holland, has heretofore purchased, and is now nominally the owner of stocks in the defendants, Planters National Bank of Clarkdale, Planters Trust & Savings Bank, Progressive State Bank, Bank of Hollandale, and Planters Manufacturing Company; plaintiff is unable to state to this Court the exact number of shares or the value thereof, nominally owned by said Florence T. Holland in said corporations, or either of them, but plaintiff alleges on information and belief that the nominal holdings of the said Florence T. Holland in said corporations exceed in value the sum of Two Hundred Fifty Thousand Dollars ($250,000.00).

31 XI.

Plaintiff shows that in addition to the investment of a great majority of the proceeds of the transfers made by said Holland to defendant, Florence T. Holland, in negotiable and transferable property, a small portion or part thereof has been invested and reinvested in real proper located in this, and adjoining counties, of the Misisssippi Delta; plaintiff shows that he is not advised of each and every part and parcel of said real property because he shows that the title to some parts is vested in the names of persons or corporations other than the defendant, Florence T. Holland, which vestment of title was, and is, made by said Holland and said Florence T. Holland with the purpose or intent of further hindering, delaying and defrauding plaintiff and other creditors. Plaintiff shows, however, that the title to all of the real property hereinbefore described is now outstanding in the name of the defendant, Florence T. Holland, with the exception of that property described in the deed made Exhibit "G" to this bill of complaint, which plaintiff shows has been nominally sold and conveyed to the

defendant, F. M. Owens, and the purchase price secured by vendor's lien and the lien of a deed of trust purporting to be in favor of the defendant, Florence T. Holland, evidenced by two negotiable promissory notes of said Owens, payable to said Florence T. Holland of the aggregate principal amount of Fifty Thousand Dollars ($50,000.00).

Plaintiff shows that in addition to the property hereinbefore described, the following described property is nominally owned by the defendant, Florence T. Holland, in this County, to-wit:

32 Beginning at Southwest corner of North Half of Northwest Quarter of Section Twenty-eight, Township Twenty-eight, Range Three West, running thence North along Western boundary of said Section Twenty-eight, and the Western boundary line of said Section Twenty-one, to a point where boundary line of said Section Twenty-one intersects the South boundary line of a public road, leading from Clover Hill to Jonestown, thence in a northeasterly direction along southerly boundary line of said public road to a point where the said southerly boundary line of the said public road intersects the westerly boundary line of a ditch or canal known as the Swan Lake Lateral Ditch or Canal of Black Drainage District, thence in a southerly direction following the westerly boundary line of said lateral ditch or canal to a point where said line intersects the south boundary line of said Section Twenty-two, thence in a westerly direction following the southern boundary line of Section Twenty-two, and south boundary line of Section Twenty-one, to the northeast corner of North Half of North Half of Northwest Quarter of Section Twenty-eight, thence in a southerly direction along the eastern boundary line of the North Half of Northwest Quarter of Section Twenty-eight, to the southwest corner of said North Half of Northwest Quarter

of Section Twenty-eight; thence west along south
boundary line of the North Half of North-
33 west Quarter of Section Twenty-eight, to
point of beginning, the tract herein conveyed,
North Half of Northwest Quarter of Section Twenty-
eight, and all that part of Section Twenty-two lying
west of Lateral Ditch or Canal south of public road,
and all that part of Section Twenty-one lying south
of public road, containing in the aggregate 290 acres,
more or less. West Half of West Half of Section
Twenty-seven and Northeast Quarter and South Half
of Northwest Quarter and North Half of Southwest
Quarter and Southeast Quarter of Southwest Quarter
and West Half of Southeast Quarter and Southeast
Quarter of Southeast Quarter of Section Twenty-eight,
and Northeast Quarter of Northwest Quarter and
North Half of Southeast Quarter of Northwest Quar-
ter and North Half of Northeast Quarter and North
Half of the south line of Northeast Quarter of Sec-
tion Thirty-three and Northwest Quarter of North-
west Quarter and North Half of Southwest Quarter
of Northwest Quarter of Section Thirty-four, Town-
ship Twenty-eight, Range Three, West, containing 880
acres.

Plaintiff further shows that the said W. P. Hol-
land is the President of and in control of the defend-
ant, Planters Trust & Savings Bank, and that he has
caused the title to the following described property
in this County, to-wit:

All of Sections Twenty-one and Twenty-two; South
Half of Southeast Quarter and Southeast Quarter of
Southwest Quarter of Section Twenty; North Half of
Southwest Quarter and Southwest Quarter
34 of Southwest Quarter of Section Seventeen
and West Half of Northwest Quarter of Sec-
tion Twenty-seven, all in Township Twenty-seven,

North, Range Four, West, and East Half of Section Twenty-four, Township Twenty-seven, Range Five. West, to be vested in the said defendant, Planters Trust & Savings Bank, trustee.

Plaintiff shows that as a matter of truth and in fact the defendant, Florence T. Holland, claims to own an interest, the exact extent of which is unknown to your plaintiff, in said properties, but which plaintiff alleges on information and belief to be a one-third undivided interest therein and that said interest in said property is one of the results of the re-investment of the property transferred by said W. P. Holland to the said Florence T. Holland;

Plaintiff further shows that nominally the title to the following described property is now vested in the defendant, Florence T. Holland:

West Half of West Half of Southeast Quarter of Section Three and Northwest Quarter of Northeast Quarter and East Half of Northeast Quarter of Northwest Quarter of Section Ten, all in Township Twenty-six, North Range Three, West, Coahoma County, Mississippi.

and that said property is also a part of the result of said scheme and conspiracy.

XII.

Plaintiff alleges as aforesaid the large part of the property which is the result of the scheme and conspiracy herein outlined to the Court is now invested in property easily and quickly transferable to bona fide purchasers for value, and is subject to be placed beyond the reach of plaintiff; that plaintiff is advised and so charges the facts to be that he is entitled to have the appointment of, and it is the duty of this Court to order the appoint-

ment of a receiver of all of the property, both real and personal and mixed, of the defendant, Florence T. Holland, which said receiver shall be directed to take into his possession and to deal with in accordance with the orders of this Court, all of said property, and that the said Florence T. Holland should be directed by the decree and order of this Court to turn over and deliver to said receiver all of said property;

Plaintiff further shows that he is without remedy at law, and that he is entitled to have the issuance of a writ of temporary injunction, enjoining the said defendant, Florence T. Holland, from making any transfer whatsoever of any part or parcel of her property pending the outcome and settlement of this litigation; that the said other defendants named herein should be, by said writ of injunction, enjoined from consenting or allowing the transfer of any stock or stocks in the said defendants, or either of them, now nominally outstanding in the name of the defendant, Florence T. Holland.

XIII.

Plaintiff now shows that each and all of said transfers herein mentioned were and are fraudulent and void, and made as aforesaid with intent to hinder, delay and defraud your plaintiff and other creditors, and have had the effect thereof, and should be, by order of this Court, declared to be null and void, and for naught held, and that a decree of this Court be entered, granting and impressing in favor of your plaintiff a lien upon all of the property of the de-
36 fendant, Florence T. Holland, whether herein specifically described or not, for the satisfaction of the indebtedness due plaintiff by said defendant, and that a Commissioner of this Court be appointed, with direction to sell said property in the manner provided in said decree for the satisfaction of the indebtedness so due to your plaintiff.

Plaintiff would show to the Court that all of the fraudulent transfers heretofore alleged as having been made by the said W. P. Holland to his said wife, Florence T. Holland and others, were made either after or in anticipation of his liability for indebtedness to plaintiff and other creditors; that the said W. P. Holland had made representations to creditors, upon which the creditors each and all relied; that he, the said W. P. Holland, was worth personally in good and solvent securities and property an amount exceeding $3,000,000.00, over and above any and all indebtednesses which he, the said Holland, owed or was liable for to any person; that the creditors of said Holland, relying upon these assurances and believing that the said Holland was solvent, accepted said assurances and extended credit to the said Planters Bank, and to the said W. P. Holland, who was at that time President of the Planters Bank, and extended and renewed indebtednesses for the said Holland and the said Planters Bank on the assurances and representations of the said Holland, when in truth and in fact the said Holland was then about to, or had already transferred, or since transferred, every cent in money, stocks, bonds, securities and property to his wife, the said Florence T. Holland, with the intent upon their part, of him, the said W. P. Holland, and her, the said Florence T. Holland, to defeat and defraud the creditors of their just demands and indebtednesses; so that, whereas, before and during the years
37 1919, 1920 and 1921, the said W. P. Holland was worth exceeding $3,000,000.00, and was the President of the Planters Bank of Clarksdale, Mississippi, and the said Florence T. Holland was possessed of very little money and personal property and real estate, it now appears that the said Florence T. Holland is exceedingly rich and worth more than $2,000,000.00; that she is now the President of the Planters National Bank, Clarksdale, Mis-

sissippi, and owns all the property, money, and assets formerly belonging to the said W. P. Holland, while the said W. P. Holland transacts all of the business for her, the said Florence T. Holland, and is in active charge and the Vice-President of the said Planters National Bank, operating the same for the said Florence T. Holland, and the said W. P. Holland is daily, with acumen, shrewdness and business ability, adding to and building up the fortune, which in truth and in fact belongs to him, but is nominally in the name of his said wife, Florence T. Holland, held, as plaintiff alleges, by her in trust for the creditors of W. P. Holland as aforesaid, and in this connection plaintiff alleges that if for any reason it is impossible to identify and show beyond doubt that such of the property now in the hands of the said Florence T. Holland is the exact property in kind and nature as heretofore transferred to her by him, the said W. P. Holland, nevertheless, plaintiff alleges that in equity this Court ought and will impress a lien upon the property of every kind and description in the hands of the said Florence T. Holland, which may be the usufruct, interest, principal, and/or result of any and all property of every kind and character, which may have heretofore, or hereafter may be, transferred by the said W. P. Holland to his said wife, Florence T. Holland, fraudulently as aforesaid.

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XV.

The plaintiff alleges that the said W. P. Holland has likewise fraudulently transferred at various times property, money, and/or valuable things to his sister, Mrs. Mary H. Hays, and to his niece, Ruby Hays, having conducted business in the names of both of these ladies for his own benefit and in order to defeat and defraud creditors of the said W. P. Holland of their just debts.

Plaintiff is not familiar with each and every transaction as above set out, as to the exact detail thereof, but here and now alleges and asserts that the said W. P. Holland carried on a large part of his business with Gray & Wilmerding, of New York, the said firm being brokers in New York City, in the name of the said Mary H. Hays, sister, and the said Ruby Hays, niece aforesaid. Plaintiff would respectfully show that the said Mary H. Hays and said Ruby H. Hays should be made parties hereto for the express purpose of giving an accounting as to what may or may not remain in their hands of the funds of the said W. P. Holland, as to how said transactions were carried on, and what, if any, disposition they made of the said funds and the business carried on in their names and with their consent for the special benefit of the said W. P. Holland, and in order to screen him from the just demands of his creditors and defraud them and defeat their just claims.

Plaintiff alleges that as another step in the
39 fraudulent transfer and conveyance of the property of the said W. P. Holland, the said W. P. Holland, through his said wife, Florence T. Holland, has transferred and conveyed certain property, rights or choses in action to L. C. Townes, a brother of the said Florence T. Holland, in this:

That the Missouri State Life Insurance Company, a corporation of the State of Missouri, filed suit as against the said W. P. Holland for a large amount of money and joined the said Florence T. Holland in said suit, alleging therein, as is alleged herein, that the said W. P. Holland had fraudulently and unlawfully transferred and conveyed to the said Florence T. Holland large amounts of property and money in order to defeat the creditors of the said W. P. Holland, the said cause being No. 4043 on the docket of the Chancery Court of the Second Court District of Coahoma County, Mississippi.

Plaintiff would respectfully show to the Court that during the trial of the said cause and in order to further muddy the waters and transfer and dispose of the property of the said W. P. Holland, and in order to allow the said Florence T. Holland and the said L. C. Townes, her brother, to fraudulently claim a large indebtedness as against the said W. P. Holland, and thereby defeat the creditors of the said W. P. Holland, the said Florence T. Holland and the said W. P. Holland, defendants in said Cause No. 4043 on the docket of said Chancery Court, apprehending that a judgment would be gotten by the Missouri State Life Insurance Company, and that the facts alleged in said bill as to the fraudulent conveyance from W. P. Holland to Florence T. Holland would be demonstrated and performed, the said Florence T. Holland, W. P. Holland and L. C. Townes entered into a fraudulent agreement whereby it was agreed that the said Florence T. Holland should pay in money, or other valuable things, to the Missouri State Life Insurance Company, an amount equal to approximately $75,000.00, and that in turn the said Missouri State Life Insurance Company should transfer to L. C. Townes, a brother of Florence T. Holland, all right, title and interest in and to the claim or chose in action of the Missouri State Life Insurance Company against the said Florence T. Holland and W. P. Holland, and thereby creating a claim on the part of the said L. C. Townes as against W. P. Holland and Florence T. Holland to the extent of approximately $3,000.00, with interest, which claim plaintiff alleges is wholly and entirely fictitious and fraudulent, and said agreement further provided that the said L. C. Townes, brother of the said Florence T. Holland, should carry on and dispose of the suit of the Missouri State Life Insurance Company against W. P. Holland and Florence T. Holland, No. 4043 on the Chancery Court Docket aforesaid.

Plaintiff alleges that the result of the said fraudulent conspiracy and combination between the said Florence T. Holland, W. P. Holland and L. C. Townes was this: That the said L. C. Townes, without having paid out any money or other valuable thing in any way, became seized and possessed of a fictitious and fraudulent claim against the said Florence T. Holland and W. P. Holland, being the claim of the Missouri State Life Insurance Company for approximately $300,000.00, and interest, and that in truth and in fact the said Florence T. Holland purchased the said claim with her own money or
41 other valuable thing and agreed that the said L. C. Townes should be the ostensible owner thereof, so that in case creditors of the said W. P. Holland should sue him and the said Florence T. Holland, that the said L. C. Townes could appear to be the owner of a large claim of more than $300,000.00 which would be prior in point of time to the claim of any other creditors suing thereafter.

Plaintiff alleges that the suit of the Missouri State Life Insurance Company was founded on a judgment procured as against the said W. P. Holland by the Missouri State Life Insurance Company on the 27th day of January, 1923, for the sum of $240,524.02, with interest thereon at the rate of 6% per annum, said cause being No. 111 at law, in the United States Court for the Delta Division of the Northern District of Mississippi, and that the effect of said agreement is that the said L. C. Townes appears to be the owner of said judgment, as well as the right of action in Cause No. 4043, but plaintiff alleges that in truth and in fact he is now the owner thereof but that the result of the said fraudulent transaction was that W. P. Holland, with his own money, in the name of his wife purchased the judgment against himself for himself, and for his own use.

Therefore, the plaintiff alleges that the said judgment now enrolled on the judgment roll of the Missouri State Life Insurance Company against W. P. Holland, procured originally in the United States Court for the Delta Division of the Northern District of Mississippi, ought and should be canceled by order of this Court, and that the said L. C. Townes should be declared not to be the owner thereof or to have any interest therein, and the said Florence T.
42 Holland should be declared by decree of this Court not to be the owner thereof or to have any interest therein, and, further, that the judgment itself was canceled and wiped out by the fraudulent sale and transfer thereof as set forth above.

Wherefore, plaintiff prays that the said L. C. Townes be also summoned herein as a party hereto to answer under oath these allegations and the interrogatories attached.

XVI.

The premises considered, plaintiff prays for the issuance of summons to all of the defendants hereinbefore mentioned, viz: Florence T. Holland, Planters National Bank of Clarksdale, Peoples Bank of Jonestown, Planters Trust & Savings Bank of Clarksdale, Miss., Bank of Lula, Lula, Miss., Progressive State Bank, Tutwiler, Miss., Bank of Hollandale, Hollandale, Miss., Paul Holland, Mary H. Hays, Ruby Hays Thompson, Planters Manufacturing Company, Clarksdale, Miss., Bank of Ruleville, Ruleville, Miss., F. M. Owens, and L. C. Townes, commanding them to appear at the time fixed by law before this Honorable Court, then and there to plead, answer or demur hereto, under oath, the oath or oaths to any answer or answers and the interrogatories propounded and herein filed are hereby expressly required.

XVII.

Plaintiff prays that the defendants may answer under oath fully and completely all the interrogatories attached hereto and file the answers to said interrogatories as a part of their answer to this bill.

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XVIII.

Plaintiff prays that in addition to the personal judgments herein prayed for that all of the property herein mentioned and referred to, whether fully described herein or not as having been transferred, assigned, sold and delivered by the said W. P. Holland to any other person may be held by this Court to have been so transferred, fraudulently, and such transfers to be void in toto, and that a lien be impressed on all of said property wherever the same may be found for the payment of the judgments against the said W. P. Holland; that wherever the said property cannot be located that the same is shown to have gone into the personal estate of any of the defendants that the personal judgments be given by this Court against such defendants for the full amount of money, property or other things so fraudulently received by them.

Plaintiff further prays that a preliminary injunction may issue from this Honorable Court restraining the defendants and all of them, their agents transferring and/or disposing in any way of any of the money, property, stocks, bonds and/or other things alleged to have been transferred to him or them by the said W. P. Holland, either directly or indirectly, until further order of this Court.

XX.

44

And plaintiff prays for other, further and general relief in this cause as to equity may

seem meet, and as the case may require and as in duty bound plaintiff will ever pray, etc.

MAYNARD, FITZGERALD & VENABLE,
Attorneys for Plaintiff.

State of Mississippi,
Coahoma County.

This day personally appeared before me, the undersigned duly qualified and acting Notary Public in and for the County and State aforesaid, Gerald Fitzgerald, who, having been by me first duly sworn, states on oath that he is solicitor, against and attorney-in-fact for the within named plaintiff in the foregoing bill of complaint, and that within the knowledge of affiant and affiant's principal, all the matters and facts set forth in the foregoing bill of complaint are true as therein stated, and those set forth on information and belief affiant and his principal believe to be true.

GERALD FITZGERALD.

Sworn to and subscribed before me, this 22nd day of June, 1928.

E. J. MULLENS,
Notary Public.

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45 INTERROGATORIES TO BE ANSWERED BY THE DEFENDANT FLORENCE T. HOLLAND.

1. Give the date of your marriage.

2. State what property, if any, you had at said time, giving the nature, character, location, description and value thereof.

3. State in detail what property you acquired from your mother and/or father, or either, prior to their death, giving date, description, character, location and approximate value of such property, real or personal?

4. If you have stated that you acquired any property from your mother and/or father, state whether or not you have sold said property and if so, state to whom, when, nature of the instrument executed transferring same, consideration, how evidenced and whether or not paid.

5. If you have stated that any of the property which you may have acquired from your father and/or mother was sold, state how you invested the proceeds, if any, giving character and investment, date acquired and whether you now possess such property.

6. State what property, if any, you have ever received from the estate of your father and/or mother, giving the kind and nature of such property, including description thereof, the value, and extent when you received and what you did with it?

7. Attach to your answer copies of your income tax report to the Income Revenue Commissioner of the United States, for the years 1918 to 1928, inclusive.

8. Attach to your answer a complete detailed financial statement of your affairs as of January 1st, of each of the years of 1919 to 1928, in-
46 clusive, stating in detail the kind, character and nature of all of your property, where located and the value thereof.

9. State what property you purchased during the years 1919, 1920, 1921, 1922, from whom you purchased it, when purchased, price paid, location, and description of the property.

10. Please state what banks, brokerage houses, or other firms, persons or corporations with whom you have done business of more than $1,000.00 in value since January 1st, 1919, and also give a complete statement of all of your transactions with such persons or firms since 1920, showing deposits and withdrawals of deposits for all of said period of time.

11. Attach to your answer to this interrogatory copies of the monthly bank statements rendered to you by such banks and other persons, including brokers, for said period of time.

12. State the amount of cash money you had on hand on each of the months of the years 1920, 1921, 1922, where the same was deposited and if deposited in Banks, give the name of the Banks, location thereof and how the money was withdrawn, when and for what purpose.

13. State whether or not you have purchased any notes or bills receivable from the Planters Bank, Clarksdale, Miss., during the years 1920, 1921 and 1922, and if you state that you did purchase any notes or bills receivable from the said Bank,
47 state the purchasing price paid by you therefor, and state what you did with each of said notes and what money you have collected thereon.

14. Please state every transaction involving the purchase and the sale of stocks and bonds made by you during the years 1918 to 1928, inclusive. Give the amount and value of stocks, giving the name of the firm of brokers with which the transaction was made, the purchase price thereof, and state what you have done with such stocks and/or bonds.

15. State what firms of stock, grain, or cotton brokers you did business with during each of the

years of 1918 to 1928, inclusive, showing the years in which you did business with each of the brokers mentioned by you in this interrogatory, and attach copy to your answer of the accounts with each of said brokers.

16. State the amount of and when you subscribed for stock in the Planters Bank, Clarksdale, Mississippi, and the other Banks mentioned in the original Banks, how much stock you own in Bank now, whether direct or indirect, that is to say whether in your own name or in the name of any other person for you.

If you state that you subscribed for stock in said Bank and paid for same, state how you paid the money thereon and state the present location of the stock certificate now owned by you in the said Planters National Bank, and said other Banks.

17. Please give a list of stocks, bonds, real estate, money and/or other valuable things owned by you, whether direct or indirect, at the date of the filing of this bill. State what business you were engaged in prior to the year 1920. Give the details, the nature, character, location and description of investment of any money or property you then owned.

48 18. If you have a copy of a financial statement made by you during the years 1918, 1919, 1920, please attach the same to your answer hereto.

19. State in detail the business or business in which you are now engaged. State what corporations, banks, or companies, firms you now stock in, giving the amount, value and number of shares in each company or corporation.

20. Please attach to your answer full and complete copies of each written instrument appertaining to the settlement by you of the case of Missouri State Life Insurance Company vs. W. P. Holland and Florence T. Holland, et al., No. 4043 on the docket of the Chancery Court of the Second Court District of Coahoma County, Mississippi, giving also a detailed account of your settlement with said Company, what you paid or agreed to pay, and the exact terms of said settlement.

21. Please state why and for what purpose and for what consideration you allowed the judgment of the Missouri State Life Insurance Company against W. P. Holland, procured on the 27th day of January, 1923, for the sum of $240,524.02, being Cause No. 111 at Law in the United States Court for the Delta Division of the Northern District of the State of Mississippi, to L. C. Townes, stating what consideration the said L. C. Townes paid or agreed to pay therefor, and each detail in regard to said purchase.

22. State what property, stocks, bonds, money and/or other valuable thing you have disposed of within the past 12 months, the manner of disposal, what price you received therefor, and what you did with the proceeds, if any, including any gifts which you may have made, settlements, or trusts, either for yourself or the benefit of any other person, giving full details thereof.

49 23. If you have a personal set of books, will you please produce the same for inspection and/or copies thereof by the plaintiff.

24. Please state who has kept these books and if they are correctly kept in due course of business, and if the entries thereon were made at the date shown on said books.

25. Please state what, if any, money, correspondence, or other valuable thing, real, personal or mixed, has been transferred to you by W. P. Holland from January 1st, 1920, up to and including the date of answering this question.

26. During the year 1920 you purchased from the Planters Bank of Clarksdale, Miss., certain bills receivable of said Bank. Please state how you paid for these bills receivable, whether by check, or otherwise, giving the date of the check, the amount thereof, and upon what Bank you drew the same, and if you have the original canceled checks produce the same and attach hereto.

27. Please state where you got the money which was deposited to your name in the Planters Bank of Clarksdale, Miss., during the year 1920, from whose account the same was transferred, by check or otherwise.

50 INTERROGATORIES TO BE ANSWERED BY EACH OF THE DEFENDANTS, PLANTERS NATIONAL BANK OF CLARKSDALE, PLANTERS TRUST & SAVINGS BANK, CLARKSDALE, PROGRESSIVE STATE BANK, BANK OF HOLLANDALE, PLANTERS MANUFACTURING COMPANY, BANK OF RULEVILLE, BANK OF LULA AND PEOPLES BANK OF JONESTOWN.

No. 1. State of the number and par value of the shares of stock which appear by your books to be owned by Florence T. Holland, giving the date or

dates of the issuance of such certificates of stock, the number thereof and the number of shares represented by each certificate.

No. 2. State, if you know, the present location of such certificate or certificates.

No. 3. Please prepare a list of the number and par value of the shares of stock in your corporation which appear by your books to have been owned by W. P. Holland and/or Florence T. Holland at any time, giving the date or dates of issuance of said certificate of stocks, the number thereof and the number of shares represented by each certificate, when and to whom transferred, if transferred; and if not transferred so state.

51 INTERROGATORIES TO BE ANSWERED BY MARY H. HAYS, RUBY H. THOMPSON AND PAUL HOLLAND.

No. 1. State when, if at all, during the years 1918 to 1927, inclusive, W. P. Holland and/or Florence T. Holland, conducted or carried on any business, or the purchase of stocks, bonds, grain, cotton and/or other commodity in your name.

No. 2. If such business was carried on in your name, please state whether or not you gave a power of attorney to them or either of them to do so, and give full details of every transaction, if you know about it.

No. 3. If you state that you do not know the details at all, please state if it is not true that such busi-

ness was carried on in your name and with your consent, and under power of attorney from you, attaching, if you have it, a copy of the power of attorney.

No. 4. Please attach to your answers here a full and complete copy of all business transactions carried on with you by Gray & Wilmerding, brokers of New York City, during the years 1919 to 1927, inclusive, showing the dates of each transaction, its profit and loss, the amount of share or other commodity purchased and/or sold.

No. 5. Please give a financial statement, including all your property, money and/or other valuable things, real or personal, belonging to you during the years 1918 to 1927, inclusive.

No. 6. If you made Income Tax Report to the Government of the United States, and/or the State of Mississippi, for the years mentioned, viz:
52 1918 to 1927, inclusive, please attach copy thereof, and if you did not make such report, please state how you accounted for the profits and/or losses incurred by you in the purchase of stocks, bonds, grain, cotton and/or other commodities through the brokers, Gray & Wilmerding, and others, during the years 1918 to 1927, inclusive.

53 INTERROGATORIES TO BE ANSWERED BY L. C. TOWNES.

No. 1. It appears by agreement with the Missouri State Life Insurance Company in the case of Missouri State Life Insurance Company vs. W. P. Holland, et al., No. 4043 on the Docket of the Chancery Court for the Second Court District of Coahoma County, Mississippi, that a certain judgment therein men-

tioned, being judgment of the Missouri State Life Insurance Company vs. W. P. Holland, procured on the 27th day of January, 1923, for $240,524.02 in the District Court of the United States for the Delta Division of the Northern District of Mississippi, being Cause No. 111 at Law therein, was transferred and/or assigned to you.

No. 2. Please state what consideration you paid therefor, the manner and form of said consideration, and attach hereto any check or draft that you issued in payment thereof, and give full detailed account of said assignment and/or purchase by you of said judgment.

No. 3. Also attach to your answer full and complete copies of the originals of all written instruments received or given by you in settlement of Cause No. 4043 aforesaid, or in the purchase of the judgment in Cause No. 111 aforesaid.

No. 4. Please state whether or not at any time Florence T. Holland or W. P. Holland have purchased and/or sold stocks, bonds, grain, or cotton futures, in your name, and not for your own benefit.

No. 5. Please state what, if any, business or other business transaction has been carried on in your name either by W. P. Holland or Florence T. Holland, giving full details of such business, an accurate financial accounting thereof, including the years 1918 to 1927, inclusive.

54

No. 6. In regard to the transfer to you by the Missouri State Life Insurance Company of the judgment in Cause No. 4043 on the Docket of the Chancery Court of the Second Court District of Coahoma County, Mississippi. Please state what, if any, action you

have taken therein with reference to enforcing the said judgment and what, if any, action you have taken in Cause No. 4043 with regard to winding said suit up.

No. 7. Please produce and file herewith every agreement in writing of every kind or character entered into by you with Florence T. Holland or any other person, showing any transfer at present or in the future by you of the chose-in-action alleged to have been purchased by you or showing that you hold the same in trust for Florence T. Holland and/or any other person.

No. 8. Please state what agreement, verbal or written, or otherwise, you have or had with Florence T. Holland or W. P. Holland or any other person that you should be repaid or reimbursed for any sums advanced by you in the purchase of the above mentioned judgment described in Suit No. 4043 on the Chancery Court Docket, Second District Coahoma County, Mississippi, and please state if your agreement with the Missouri State Life Insurance Company conveyed and set forth the entire agreement as between yourself and all other persons in said suit.

55 No. 9. If you have stated that you paid any sums of money for the purchase of said judgment, please state where you got the same, out of what account you drew it, and produce the bank account showing the deposit and withdrawals of said bank account for two months previous to the purchase of said judgment up to and including this time.

No. 10. Please state if you have any agreement of any kind, either verbal or in writing, that you will be reimbursed in any way for your purchase of said judgment, or that you hold the said judgment for the benefit of any other person than yourself.

No. 11. Who first approached you with reference to the purchase of the above named chose in action, and state specifically what conversation was had with you with reference thereto, in what way you were promised a consideration for your purchase of said judgment or chose in action.

56 EXHIBIT B.

The President of the United States.

To the Marshal of the Northern District of Mississippi Greeting:

We command you that of the goods and chattels, lands, tenements of defendant W. P. Holland, late of your district, you cause to be made the sum of Thirty-Thousand Six Hundred Thirty-Two Dollars and 78 cents, which the Chemical National Bank of New York lately in the District Court of the United States, for the Delta Division of the Northern Judicial District of Mississippi, has recovered against him for damages which was sustained by reason of the non-performance of a certain promise and assumption by said defendant to the said Plaintiff made, with interest on the said sum, at 6% per centum per annum from the 20 day of October, 1925, until paid; also the sum of Eighteen Dollars and Fifty Five Cents, for Court costs by.....about said suit, in that behalf expended, whereof the said defendant was convicted as appears to us of record and that you have the said moneys before the Judge of the District Court of the United States, for the Delta Division of the Northern District of Mississippi, at Clarksdale, on the Third Monday in October next; to render to the said plaintiff for $30651.25 damages and costs aforesaid, and have then and there this writ.

Witness the Honorable Edwin R. Holmes, Judge of said Court, and the Seal thereof at Clarks-
57 dale the 11th day of June A. D. 1928, and the 152 year of American Independence.

J. J. VANCE, Clerk,
(Seal) CELIA COOK DAVIS, D. P.

The following return appears on the back of said Writ:

"Received this Writ at Clarksdale, Miss., on June 11, 1928 After diligent inquiry I failed to find any real or personal property belonging to W. P. Holland in which levy could be made upon and out of which the money could be made.

This the 18th day of June, 1928."

CHARLES R. LIGON,
United States Marshal,
By G. E. COOK, Deputy.

(Copy)

Bill of Costs.

Finding Declaration of Bill of complaint	.10
Issuing Process, Certificates and Seals	1.20
Entering return and Filing	.25
Entering Verdict and Judgment	5.00
Attorney's Fees	10.00
Marshal's fees	2.00
Total	$18.55

58 On Back of Writ.

No. 153 L.

To Oct. Term 1928.

Chemical Nat'l Bank.
Vs.
W. P. Holland.

Judgment	$30,632.78
Clerk	6.55
Attorney	10.00
Marshal	2.00

MAYNARD FITZGERALD & VENABLE,
Attorneys.

Returned and filed June 18, 1928.
J. J. VANCE, Clerk,
CELIA COOK DAVIS, D. C.

59 EXHIBIT A.

The Chemical National Bank of New York, Plaintiff,
Vs. #153 Law
W. P. Holland, Defendant.

This day came this cause for hearing, came the plaintiff in person and by its attorney, but the defendant being called came not, but so to do did wholly make default; and it appearing that the defendant has been duly and legally summoned by personal service of process more than sixty days before the first day of this term of Court, and has failed to appear, and has failed to plead, answer or demur to the declaration herein filed against him;

It is, therefore, the judgment of the Court that the plaintiff do have judgment by default against the defendant; and that the plaintiff, the Chemical National Bank of New York, a corporation do have and recover

of and from the defendant, W. P. Holland, the sum of Thirty Thousand, Six Hunderd, Thirty-two and 78/100 Dollars ($30,632.78), together with all costs of Court, for all of which execution may issue.

This October 20th, 1925.

(Signed) E. R. HOLMES,
District Judge.

Recorded Minute Book 4, page 36, United States District Court at Clarksdale, Mississippi.

60 EXHIBIT D.

Deed of Gift.

W. P. Holland,
To Deed of Gift
Florence T. Holland.

State of Mississippi,
County of Coahoma.

Be it known that for and in consideration of the natural love and effection I have for and do bear towards Florence Holland, my wife, I hereby grant, bargain, sell and convey and warrant to her and to her heirs and assigns forever, the following described property, situated in the County of Coahoma, State of Mississippi, to-wit:

That certain tract of land lying along the right bank of the Sunflower River described as follows: Beginning at a stone on the west boundary line of section Fourteen (14) 860 feet due north of the corner of sections Fourteen, Fifteen, Twenty-two and Twenty-three (13, 15, 22 and 23) thence South 60 degrees, 45 minutes East 346 feet, to a point which

is the point of beginning of the following described land, thence due north 325 feet to the center of Sunflower River; Thence eastwardly following the thread of the center line of said river to the point of intersection of said center line with the North line of Second Street of the City of Clarksdale; thence South 75 degrees, 30 minutes West, 280 feet to the Southeast corner of the Fire Station lot on the North Side of Second Street; thence North 14 degrees and 30 minutes West, 30 feet to the northeast corner of said Lot; thence South 75 degrees and 30 min-
61 utes West and parallel to the North line of said Second Street 60 feet to the Northwest corner of said Fire Station Lot on the East line of Dorr Avenue; thence North 31 degrees and 15 minutes west along the east line of Dorr Avenue, 500 feet to a point; thence North 42 degrees and 45 minutes West, 300 feet on the East line of Dorr Avenue; thence North 30 degrees and 15 minutes West 140 feet on the East Line of Dorr Avenue; thence North 1 degree and 45 minutes West 200 feet to a point on the East line of Riverside Avenue; thence 9 degrees and 45 minutes East 100 feet to a point on the East line of River side Avenue; thence North 23 degrees 15 minutes East 100 feet to a point on the East line of Riverside Avenue; thence North 4 degrees and 45 minutes East 580 feet to a point in the East line of Riverside Avenue; thence North 20 degrees and 45 minutes West 100 feet to a point in the East line of Riverside Aveune; thence North 55 degrees and 15 minutes West 100 feet to a point on the North Side of Riverside Avenue; then North 56 degrees and 15 minutes West 160 feet to a point on the North side of Riverside Avenue; thence North 77 degrees and 15 minutes West 700 feet to a point on the North Side of Riverside Avenue; thence North 79 degrees and 15 minutes West 100 feet to a point on the North side of Riverside Aveune; thence North

77 degrees 15 minutes West 100 feet to a point on the North Side of Riverside Avenue; thence north 78 degrees and 45 minutes West 170 feet to a point on the North side of Riverside Avenue; thence North 78 degrees and 15 minutes West 600 feet to a
62 point on the North side of Riverside Avenue; thence North 81 degrees and 15 minutes West 270 feet to a point on the Northside of Riverside Avenue; thence South 3 degrees and 25 minutes West 120 feet to a point on the West side of Riverside Avenue; thence South 25 degrees and 45 minutes West, 300 feet to a point on the West side of Riverside Avenue; thence South 34 degrees and 45 minutes West 300 feet to a point on the West Side of Riverside Avenue; thence South 34 degrees and 45 West 300 feet to a point on the West Side of Riverside Avenue; thence south 36 degrees and 30 minutes West 240 feet to a stake on the East Side of Oakhurst Avenue, which is also the point of beginning. This tract contains 41.51 acres of which 11.71 acres is situated in Lot 12 of Section Fourteen (14) 23.36 acres suiuated in Lot 13, of Section Fourteen (14) and 6.44 acres situated in Lot Two (2) of Section Twenty-three (23). All of Township 27, North Range 4 West.

Also, Lot Six (6) containing Thirty-eight and 41/100 acres (38.41) and all that part of Lot Nine (9) lying North of the center line of Mill Bayou, containing Twenty-nine and 21/100 acres (29.21) except 5 acres heretofore conveyed to Coahoma County, in May 20th, 1909, by deed recorded in Book 24, 301 page, of the record of land deeds in the office of the Chancery Clerk of said County, at Clarksdale, Mississippi, and except Three (3) acres conveyed to M. K. Wildberger by deed dated November 21st, 1919, and not yet of record, which said three acres, yet of record, which said three acres is described as follows:

63 Beginning at an Iron Stake in the line dividing Section Lots Eight (8) and Nine (9), about Two Hundred feet North of the Center Line of Mill Bayou, thence North along the dividing line between said Lots eight (8) and Nine (9) a distance to give a frontage of Two (2) acres to an iron State; thence West a distance to give a depth of one and one half acres (1 1/2) to an Iron State; thence South parallel to said dividing line, between said Lots Eight (8) and Nine (9) distance to give a length of Two, (2), to an Iron Stake; thence East, and perpendicular to the dividing line between said Lots Eight (8) and Nine (9) to the Iron Stake at the point of beginning. The Total Acreage herein conveyed being Sixty-seven & 62/100 (67.62) acres, and all being Section Fourteen (14) Township Twenty-seven (27) Range Four (4) West.

Also, Three (3) acres in the Southeast corner of Lot Nine (9) North of Mill Bayou in Sec. 14, Township 27, Range 4 West, more particualrly described as follows: Beginning at a stake in the line dividing Lots 8 and 9 about 200 feet from the center of Mill Bayou, and North of said Bayou, thence North along the dividing line between said Lots 8 and 9, a distance to give a frontage of two (2) acres to an Iron stake; thence West a distance to give a depth of 1 1/2 acres to a stake; thence south parallel to the dividing line between Lots 8 and 9 aforesaid, to a stake; a distance to give a depth of two acres; thence east and perpendicular to the dividing line between Lots 8 and 9 to the point of beginning.

64 Also, the following described property being situated in the City of Clarksdale, County and State aforesaid, to wit:

Lots One (1) and the Eastern Half of Lot Two (2), Lot (6) and the Eastern Half of Lot Five (5) all in Block Sixteen (16) Oakhurst Subdivision.

Lots Number Three (3) Four (4) and the West Half of Lot Number Five (5) and the West Half of Lot Number Two (2) of Block Number Sixteen (16) of Oakhurst Subdivision.

Lots Fifteen (15) Sixteen (16) Seventeen (17) and Eighteen (18) in Block Fifteen (15) in the Dolan and Peacock Oakhurst Addition.

Lots One (1) and two (2) in Block Nine in the Oakhurst Subdivision.

"Note" three (3) acres excepted in description in paragraph Two (2) page One (1) was redescribed and conveyed in paragraph Three (3) this done make descriptions conform with tracts as they were conveyed to me."

Witness my signature this 1st day of May 1920.

W. P. HOLLAND.

65 Witness:

C. G. SNYDER.

State of Mississippi,
County of Coahoma.

Personally appeared before me, the undersigned authority in and for the State and County aforesaid, the within named W. P. Holland who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned and for the purposes therein set forth and for the consideration therein set forth, it being his voluntary act and deed.

Witness my hand and Notarial Seal this 11th day of May 1920.

N. B. SESSIONS,

(Seal) Notary Public.

Recording	$1.00
Cert. F	.55
Abst'ing	3.00
	4.55

Filed for record May 15th, 1920, at 3 o'clock P. M.
Recorded May 15th, 1920.
Y. E. HOWELL, Clerk.

66 E.

W. P. Holland,
To QC Deed.
Florence Holland.

Quit Claim Deed.

This indenture made by and between W. P. Holland, party of the first part and Florence Holland party of the second part, witnesseth:

That, for love and affection, the party of the first part does hereby convey and quit claim unto the party of the second part, a one half undivided interest, being all owned by party of first part, in the following described land situated in County of Coahoma, State of Mississippi, to-wit:

All of Section Seven (7) and the West half of Section Eight (8) in Township Twenty six (26) Range Four (4) West; and the East Half of the Southeast Quarter of Section One (1); and the East Half of the East Half of the East Half of Section Twelve (12) in Township Twenty-six (26) Range Five (5) West, commonly known and referred to as the Harahan Plantation, all lying and being in the Second Judicial

District of Coahoma County, Mississippi, and comprising in all 1192.71 acres less 5.02 acres heretofore conveyed as a right of way to the Yazoo and Mississippi Valley Railroad Company, and less Eight (8) acres lying South of the County Road Running East and West and in the Southern extremity of the aforesaid property which is the land claimed by J. W. Cutrer, and the land herein conveyed com-
67 prising in all 1179.71, acres more or less.

To have and to hold the said premises unto the said party of the second part and unto her heirs and assigns in fee simple forever.

Witness my signature this 27th day of September, 1920.

W. P. HOLLAND.

State of Mississippi,
County of Coahoma.

Personally appeared before me, the undersigned Notary Public in and for the State and County aforesaid, the within named W. P. Holland who acknowledged that he signed and delivered the foregoing deed on the day and year therein mentioned.

Given under my hand and seal this 27th day of Sep. 1920.

N. B. SESSIONS,
(Seal) Notary Public.

Recording	$ .40
Cert. & F	.55
Abst'ing	1.20
	2.15

Filed for record September 30, 1920, at 9 o'clock A. M. Recorded September 30, 1920. Book 63, page 328.

Y. E. HOWELL, Clerk.

68 EXHIBIT C.

Assignment.

This Assignment, made and entered into this the 31st day of May 1928, by and between the Chemical National Bank of New York, a corporation, party of the first part, and Sterling B. Cramer, party of the second part, witnesseth:

That for and in consideration of One Hundred ($100.00) Dollars cash in hand paid to the party of the first part by party of the second part, the receipt of which is hereby acknowledged, and for other good and sufficient valuable considerations to the party of the first part accruing from the party of the second part, party of the first part does by these presents bargain, sell, assign, transfer, setover and deliver unto party of the second part that certain judgment recovered by party of the first part in the District Court of the United States for the Delta Division of the Northern District of the State of Mississippi, in Cause No. 155 at law, on the docket of the said Court, in which the party of the first part recovered of and from W. P. Holland, of Clarksdale, Mississippi, the principal sum of Thirty Thousand Six Hundred Thirty-two and 78/100 ($30,682.78) Dollars, said judgment being rendered on the 20th day of October, 1925, and appearing of record in Minute Book 4 at page 56 of the minutes of said Court.

The clerk of the said Court is hereby authorized and directed to note this assignment of record and to make such notations on his docket and to file

this assignment and/or record the same in such records and proceedings as is required for the full
69. and complete transfer and assignment of said judgment.

Witness the hand of the party of the first part this the day and year first above written.

CHEMICAL NATIONAL BANK
OF NEW YORK,
J. H. HOUSTON,
Vice-President.

Triplicate of Original.

70 State of New York,
County of New York. SS.

This day personally appeared before me the undersigned duly qualified and acting notary public in and for the County and State aforesaid, Frank K. Houston, having been by me first duly sworn, stating on oath that he is a Vice-President of the Chemical National Bank of New York, a corporation; that as such officer of said corporation for and on its behalf with full authority so to do, he signed, sealed and delivered the foregoing instrument on the day and year therein mentioned, as a voluntary act and deed of said corporation.

Witness my hand and official seal this 31st day of May, 1928.

CLARENCE A. ENGLAND,
Notary Public Weschester
County, N. Y. Clerk's
No. 136 Register's No.
O-95. King's Co. Clerk's
No. 53 Register's No.
162.

Commission expires March 30, 1930.

71 EXHIBIT F.

W. P. Holland,
To
Florence T. Holland. Q C Deed

For and in consideration of the sum of One Dollar in cash paid to the undersigned by Florence T. Holland, receipt of which is acknowledged, I hereby convey and quitclaim unto the said Florence T. Holland all right, title and interest I may have in those certain lots or parcels of land in the City of Clarksdale, Coahoma County, Mississippi, more particularly described as follows:

Lots Numbered One (1) to ten (10) inclusive, in Block Eleven (11) of the Dolan and Peacock Oakhurst Addition to the City of Clarksdale, Coahoma County, Mississippi.

Witness my hand this April 28th, 1924.
W. P. HOLLAND.

Revenue Stamps for $.50 attached and canceled.

State of Mississippi,
Coahoma County.

Before me, N. B. Sessions, the undersigned authority whichin and for the County and State aforesaid, this day personally appeared the within named W. P. Holland, who acknowledged that he signed and delivered the within named foregoing instrument on the day and date therein mentioned.

72 Witness my hand and seal of office this the 29th day of April, 1924.
N. B. SESSIONS,
(Seal) Notary Public.

Filed for record May 6, 1924, at 10 o'clock A. M.
Recorded May 6th, 1924, Book 76, page 441.

Recording	$ .20
C & F	.55
Abst.	1.50
	2.25

Y. E. HOWELL, CLERK.

73 EXHIBIT G.

W. P. Holland,
To Warranty Deed.
Florence Holland.

This Indenture, made by and between W. P. Holland, party of the first part, and Florence Holland, party of the second part, witnesseth:

That for the consideration of Five Thousand ($5,000.00) Dollars, cash in hand paid, the receipt of which is hereby acknowledged, the party of the first part does hereby convey and warrant unto the party of the second part a one-fourth interest in the following described tracts or parcels of land, to-wit:

All that part of sections Five (5) Six (6) Seven (7) and Eight (8) lying north of the Yazoo-Mississippi Delta Levee and between said levee and the River, said sections being in Township Twenty-six (26) Range Six (6) West, Coahoma County, Mississippi, also all of that part of the North Half (N½ of Section Twelve (12) and that part of the Southeast Quarter (SE¼) of Section Twelve (12) lying west of the Yazoo Mississippi Delta Levee; also all that part of the south half S. ½ of Section Thirteen (13)

lying west of the said levee right of way and all that part of the Northeast Quarter (NE¼) of Section Thirteen (13) lying between the levee right of way and Lake Charles, and all of the southwest Quarter (SW¼) of the Northwest Quarter of Section Thirteen (13), all of the East Half (E½) of Section Fourteen (14) and the northeast quarter (NE½) of Section Fourteen (14) all of said land in sections Twelve (12) Thirteen and Fourteen #13 and 14) being in Township Twenty-six (26) Range Seven (7) West, all of the above described land being in Coahoma County, Mississippi.

Also all that part of the West Half (W½ of Section Twenty-four (24) and that part of the West Half (W½) of section Twenty-five and that part of Section Thirty-six except the Southwest Quarter thereof, lying west of the right of way of the Mississippi levee; also all of fractional section thirty-five (35) and the Southeast diagonal half of section twenty-six (26) Range Seven (7) West, Bolivar County, Mississippi, there being embraced in the entire tract Twenty-two Hundred (2200 acres more or less, being a part of what was formerly known as the Eldridge Plantation conveyed by the United States Lumber and Cotton Company to the said Oscar G. Johnston.

To have and to hold the said one-fourth interest in the premises unto the said party of the second part, her heirs and assigns, in fee simple forever.

Witness my signature, this 20th day of July, 1921.

W. P. HOLLAND.

State of Mississippi,
County of Coahoma.

Personally appeared before me, the undersigned Notary Public, in and for the State and County

aforesaid, the within named W. P. Holland, who acknowledged that he signed and delivered the foregoing deed on the day and year therein mentioned.

Given under my hand and seal this the 20th day of July, 1921.

N. B. SESSIONS,
(Seal) Notary Public.

75 $5.00 Rev Stamps affixed.

Filed for record the 22nd day of July, 1921, L. P. M. Recorded the 22nd day of July, 1921.

Rec. Fee $1.00
Cert. & F ..... .55
Abst'ing. 2.10

Y. E. HOWELL, Clerk,
By A. C. JOHNSTON, D. C.

Recorded in Land Deed Book 13, page 43.

Filed June 23 1928.

J. J. VANCE, Clerk,
CELIA COOK DAVIS, D. C.

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76 SUPPLEMENTAL BILL AND APPLICATION FOR A RECEIVER.

In the District Court of the United States for the Delta Division of the Northern District of Mississippi.

Sterling B. Cramer,
vs No. 129 in Equity.
Florence T. Holland, Planters National Bank of Clarksdale, Peoples Bank of Jonestown, Planters

Trust & Savings Bank, Bank of Lula, Progressive State Bank, Bank of Hollandale, Paul Holland, Mary H. Hays, Ruby Hays Thompson, Planters Manufacturing Company, Bank of Ruleville, F. M. Owens, L. C. Townes.

(Supplemental Bill Cause No. 129 Equity.)

And now comes Sterling B. Cramer, plaintiff in the above styled cause, and re-iterating and alleging all and singular the facts and statement of facts as set forth in the Original Bill filed herein, and praying for all and singular the relief prayed for in the Original Bill herein, and in addition thereto shows the following facts and prays for the relief herein asked for, to-wit:

77 Plaintiff shows to the Court that in the Original Bill in paragraph 12 thereof there is a prayer for the appointment of a receiver of all the property both real, personal and mixed, of the defendant, Florence T. Holland, and further allegations in said bill are to the effect that all of the said property now owned and held by the said Florence T. Holland, purchase with the money of W. P. Holland or has been so intermized and inter-mingled with the property of Florence T. Holland, that it is necessary that a receiver be appointed to take charge of the property, both real and personal, wheresoever situated in order to preserve the same for the plaintiff.

II.

Plaintifff further shows to the Court that in various ways in addition to the allegations set forth in the Original Bill, said Mrs. Florence T. Holland, through the agency of her husband, W. P. Holland, has transferred and attempted to hide from the creditors of

W. P. Holland and her creditors a large part of the estate of said W. P. Holland which has already been transferred fraudulently to her, as instance of which is this:

As alleged in the Original Bill, under paragraph 15, page 24 thereof, the facts are set forth which show that the Missouri State Life Insurance Company had a large judgment against W. P. Holland recovered in this Honorable Court, and that thereupon they filed a bill in Cause No. 4043 in the Chancery Court of the Second Court District of Coa-
78 homa County, Mississippi, to set aside the very identical fraudulent transfers which are complained of in the Original Bill in this cause, and it is alleged in the Original Bill herein that a fraudulent compromise was reached in the said cause 4043 by the payment to the said Missouri State Life Insurance Company of approximately $75,000 by the said Florence T. Holland, and that the said Florence T. Holland and one Lacey Townes, her brother, and the said W. P. Holland conspired together to both becloud the record and defeat and defraud creditors by having Lacey Townes, a brother of Florence T. Holland, purchased with the money of W. P. Holland held by Florence T. Holland a judgment of approximately $300,000.00 due to the said Missouri State Life Insurance Company by the said W. P. Holland, so that the said Lacey Townes might appear to be the owner of a judgment of approximately $300,000.00, which should appear to be superior to the judgment of the plaintiff and to the claims of the other creditors of the said W. P. Holland, Plaintiff in said paragraph in the Original Bill alleged that the said Lacy Townes was a mere go-between, that he did not put up any money of his own, but only used the money of Florence T. Holland, and that for said compromise the said Missouri State Life Insurance Company there-

upon transferred to the said Lacey Townes its judgment against the said W. P. Holland, and that thereafter the said Lacey Townes held said judgment against the said W. P. Holland, but in reality the said judgment belonged to the said Florence T. Holland for the use and benefit of said W. P. Holland and
79 and was merely taken in the name of the said Lacey Townes so as to have the records show that Lacy Townes held a judgment against the said W. P. Holland for a large amount which judgment was of date long prior to plaintiff's judgment, and plaintiff further alleged that the holding of said judgment by said Lacey Townes was wholly fictitious and void, but in truth and in fact the said Florence T. Holland using the money of the said W. P. Holland, had through the instrumentality of the said Lacey Townes purchased the said judgment in reality to protect the said Holland and the property of the said Holland in her hands, and to further defeat and defraud the creditors of the said W. P. Holland and especially plaintiff, who was a creditor. Plaintiff now shows to the Court that since the filing of the Original Bill herein a further fraudulent transfer of said judgment has been made, to further defeat and defraud the creditors and to becloud the record in this:

That the said Lacey Townes, after hearing of the filing of the Original Bill in this cause and becoming afraid of his position therein, demanded that he be relieved from his false position, and thereupon in order to relieve the said Lacey Townes and to further transfer the said judgment and property, the following acts and things were done, as this plaintiff is informed and believes, to-wit:

The first fraudulent compromise with the Missouri State Life Insurance Company in Cause No. 4043, as your plaintiff is informed and believes, occurred in this manner:

One Jake Fink had purchased from the said Missouri State Life Insurance Company a plantation in Coahoma County, Mississippi, on which he owed the Missouri State Life Insurance Company, a large, amount of money, to-wit: approximately
80 $175,000.00. The said Jake Fink was not coercible and practically insolvent, and the property, which was the only security the Missouri State Life Insurance Company held for the payment of its $175,000.00, was not worth exceeding $100,000. Therefore, the plan was conceived and carried out that instead of Mrs. Holland paying the Missouri State Life Insurance Company in the compromise of its suit against her approximately $75,000.00 in cash that the payment should be made in this way:

Lacy Townes should purchase from the Missouri State Life Insurance Company the said Jake Fink Plantation at and for the price of approximately $175,000.00 though the said property as alleged was not worth exceeding $100,000; that the said Lacey Townes should pay $55,000 in cash on said purchase and give his notes amounting to $119,222.00 for the balance of the purchase price of said plantation, and that the said deferred payments of $111,222 should be evidenced by four (4) notes, to-wit, one note for $7,948.13 due December 1st, 1928, one note for $3,974.07 due December 1st, 1929, one note for $3,974.07 due December 1st, 1929, and one note for $103,325.73 payable in annual installments of $7,948.13 due annually on December 1st, 1930 and thereafter until the same should be fully paid.

Plaintiff is informed and believes that Mrs. Florence T. Holland furnished, through the Planters National Bank of Clarksdale, Mississippi, of which she is the President, or through the Planters Trust & Savings Bank, a savings bank adjunct of the said Planters National Bank, the sum of $55,000 in cash for the use of the said Lacey Townes
81 in purchasing the said Jake Find Plantation, qne in addition thereto the said Florence T. Holland indorsed of the above notes that note for $7,948.13 due December 1st, 1928, and those two other notes for $3,974.07 each due December 1st, 1929, set forth above. In that way the said Florence T. Holland paid to the Missouri State Life Insurance Company, through the instrumentality of the said Lacey Townes, approximately $70,862.26.

Plaintiff alleged in the original bill, and now here alleges, that the said compromise of said suit and the purchase of the said property by the said Lacey Townes was a fraud in law and in fact, for the purposes aforesaid, and plaintiff is informed and believes that said fraud was carried out by the Missouri State Life Insurance Company deeded to Lacey Townes the said Jake Fink Plantation by deed recorded in Book 15, page 64, of the record of land deeds for the First Court District of Coahoma County, Mississippi, for the consideration of $55,000.00 and $119,222.00 deferred payments as above stated, reference to which is here made, and a copy thereof will be produced at the hearing hereof. Thereupon Lacey Townes executed to the Missouri State Life Insurance Company a deed of trust on said property which is recorded at Book 28, page 555, of said records of land deeds, which said deed of trust secured the balance of the said $119,222 deferred purchase price thereof.

Plaintiff is informed and believes that as a further part of the scheme to carry out the said fraudulent transfer of said judgment and property as aforesaid,

an assignment was made by the Missouri State Life Insurance Company of date the 20th day of
82 September, 1927, conveying and assigning to the said Lacey Townes that certain judgment owned by the Missouri State Life Insurance Company as against the said W. P. Holland for approximately $240,000.00 and interest thereon for several years, and thereafter further carrying out said fraudulent scheme and transfer of said judgment and property, plaintiff is informed and believes that the said Lacey Townes requested the said Florence T. Holland and W. P. Holland that he be relieved from further liability and responsibility therein, whereupon plaintiff is informed and believes the said Florence T. Holland and W. P. Holland caused the said Lacey Townes to execute a deed to the Oakhurst Company, a corporation organized for the use and benefit of the said Florence T. Holland and W. P. Holland, transferring the said property known as the Jake Fink Plantation to the said Oakhurst Company for the consideration of $100.00, the said Oakhurst Company assuming the indebtedness owed by the said Lacey Townes to the Missouri State Life Insurance Company, and releasing the said Lacey Townes from further liability thereon, and plaintiff is informed and believes that the said Lacey Townes also transferred and assigned to the Oakhurst Company, or to some other person or company unknown to plaintiff, the said judgment of $240,000 with interest aforesaid, amounting to $300,000.00, owned by the Missouri State Life Insurance Company and held by it originally against the said W. P. Holland. Plaintiff alleges in regard to the Oakhurst Company that the same was organized on February 20th, 1928, with an authorized capital stock of $300,000; that the incorporators were D. B. Sessions, confidential friend of said W. P. Holland and Florence T. Holland, and

cashier of the Planters National Bank, of
83 which Mrs. Florence T. Holland is President; and plaintiff is informed and believes that the said N. B. Sessions put no money of any kind, character or description in said corporation; that the other incorporators of said Oakhurst Company were Lacey Townes, a brother-in-law of the said W. P. Holland and brother of said Florence T. Holland, and plaintiff is informed and believes that the said Lacey Townes put no money of any kind, character or description in said corporation, and the last incorporator of said corporation was W. D. Garner, the brother-in-law of the said Florence T. Holland and said W. P. Holland, and plaintiff is informed and believes that the said W. D. Garner neither subscribed for stock nor put any money of any kind, character or description in said corporation, but if any money was ever put in said corporation by either one of the three incorporators aforesaid, it was the money of the said Florence T. Holland placed in their hands by the said Florence T. Holland for the purpose of organizing the Oakhurst Company, a corporation, an instrument which the said Florence T. Holland and W. P. Holland might from time to time transfer fraudulently, such of their property that they could in order to further defeat and defraud the creditors of the said Florence T. Holland and the said W. P. Holland.

As another instance of fraudulent transfers and to further show the utility of the Oakhurst Company to the defendant Florence T. Holland for the purpose of fraudulent transfers, plaintiff now shows that the said Florence T. Holland has converted certain notes and indebtedness belonging to her to the Oakhurst Com-
pany, being the Company above mentioned,
84 and especially that property described as follows, to-wit:

North Half of Southwest Quarter and Southwest Quarter of Southwest Quarter of Section 17, South Half of Southeast Quarter and Southeast Quarter of Southwest Quarter of Section 20;

All of Section 21;

All of Section 22;

West Half of Northwest Quarter of Section 27; Northwest Quarter of Northeast Quarter and Northeast Quarter of Northwest Quarter of Section 28;

All in Township 27, Range 4 West.

Each Half of Section 24 in Township 27, Range 5 West, in County of Coahoma; and also Range One West, Quitman County, Mississippi.

Plaintiff alleges that the method and manner of the transfer of her interest in this property to the Oakhurst Company was procured by foreclosures of certain deeds of trust which the said Florence T. Holland either actually and legally owned, and having the property thereunder, transferred and sold by such foreclosures to the Oakhurst Company, thereby hiding the interest of the said Florence T. Holland in said property. The method and manner of the foreclosures are peculiarly known to the said Florence T. Holland and/or her agent, W. P. Holland, acting for her in said schemes and devices, and therefore the plaintiff is unable to wet out herein in detail the exact nature of such transfers; but plaintiff is informed and believes that the effect of the organization of said corporation and the subsequent transfers to it of the property now owned by it was to defeat and defraud creditors and an attempt to hide from creditors the property and money and the judgment aforesaid held by Florence T. Holland under fraudulent transfers to her from her husband, W. P. Holland.

85

Plaintiff is further informed and believes that certain notes aggregating $25,000.00 secured by deed of

trust recorded in Book 55, page 402, being the notes of W. K. Herrin et al payable to or made for the benefit of W. P. Holland et al, were fraudulently transferred on October 15, 1921, by marginal note on the record of said deed of trust. The said page, said transfer being prima facia fraud because not reciting any consideration and being a transfer from W. P. Holland to his wife, Florence T. Holland, made on October 15, 1921, but alleged to be carrying out a transfer sale of said notes theretofore made on February 2, 1921. Plaintiff on information and belief charges the fact to be that the said notes so transferred and assigned by the said W. P. Holland to the said Florence T. Holland was a fraudulent of the plaintiff in his just claim and to defeat creditors generally, the plaintiff is further informed and believes that a further step made in the fraudulent conspiracy to hide said transfer of said note was taken as shown by the records of land sales, mortgages and transfers in Coahoma County, Mississippi, by having the property which was conveyed by said deed of trust and having part of the purchase price of which the said $25,000.00 in notes were given foreclosed by fraudulent foreclosure and sold to the said Oakhurst Company by deed of date, March 13, 1928, recorded at page 8 of book 97 of the record of land mortgages for the second Court District of Coahoma County, Mississippi, and by various other fraudulent sales transfers and foreclosures which will be shown by the proof on the trial of this cause.

In this manner, plaintiff is informed and
86 believes that more than $50,000.00 worth of property has been fraudulently transferred to the said Oakhurst Land Company, not including the transfer to it of the property known as the Jake Find property hereinbefore referred to.

Plaintiff is further informed and believes that in the further effort to defeat and defraud creditors

and especially the plaintiff the said Mrs. Florence T. Holland has through her agent, W. P. Holland, caused to be made upon her books of account which have been kept by and under the direction of her husband, W. P. Holland, certain false fraudulent alterations and entries and the said books mutilated so as to show falsely the results thereof amounting in aggregate to more than $750,000.00, which said changes, mutilations and alterations are apparently of recent nature and all done as the plaintiff is informed and believes for the express purpose and with the intent then and there to hinder, delay and defraud the creditors of the said W. T. Holland and of the said Florence T. Holland who is possessed as aforesaid of all the property originally belonging to the said W. P. Holland.

The plaintiff further alleges upon information and belief that the said Florence T. Holland, through her husband, W. P. Holland, is now engaged in large gambling speculations on the various exchanges and boards of trade throughout the United States, using in such hazardous undertakings the very money and property as collateral security for such operations here involved in this suit. Plaintiff alleges that such gambling speculations are extremely hazardous and that there is great danger that the property involved here in this suit may be lost or again transferred and assigned so that the plaintiff, even though he
87 should recover a judgment herein will be without remedy.

The Plaintiff herein reiterates and alleges all of the facts alleged in the original bill filed herein and again prays for all of the relief asked for therein and herein, and in addition thereto, plaintiff prays that the Oakhurst Company, the corporation aforesaid, be made a party hereto for the purpose of having relief granted against it, the plaintiff prays a judgment may be given against the said Oakhurst Company for any and

all property found to be in its hands as illegally and fraudulently transferred to it by any of the defendants hereto and if said property is not in its hands but has been sold and any of said money and/or property mingled with the property of the Oakhurst Company then such judgment be given against it personally as trustee for plaintiff and plaintiff prays that your Honor grant a process to be issued to the said Oakhurst Company commanding it to appear at a time fixed by law then and there to plead, answer or demur hereto and that upon the final hearing your Honor give such judgment herein against it and the other defendants as to equity may seem meet and plaintiff prays for general relief.

The plaintiff alleges that on account of the matters and things alleged in the original bill and herein and as will appear from the proof, the plaintiff is entitled to the immediate appointment of a receiver herein to take charge of the estate of the said Florence T. Holland, which estate plaintiff alleges consists principally, as he is informed and believes of the property fraudulently transferred to her by her said husband, W. P. Holland. Wherefore, plaintiff prays that your Honor set a day for the hearing of this motion, for
88 the appointment of a receiver and that after due notice given to such of the defendants as may be necessary for said hearing that your Honor appoint a receiver herein to take charge of and conserve the corpus of this said estate of the said Florence T. Holland for the benefit of the plaintiff and all properties concerned and that said receiver be appointed with all the powers, duties, privileges and authorities usually accorded and given to receivers in such cases and that said receiver be given the power, right and authority to sue for and recover such of the properties as may be found in the hands of persons other than the said Florence T. Holland and the further right to intervene in any and all suits wherein the

title to any of said properties is in controversy and do such other acts and things as may be deemed by this Court necessary to conserve the estate and to prevent further transfers, assignments thereof or losses by speculation and gambling.

Plaintiff attaches hereto certain interrogatories which it prays may be answered under oath by the several parties defendant within the time required by law.

Respectfully submitted,
MAYNARD, FITZGERALD
& VENABLE,
Attorneys for Plaintiff.

Filed Jan. 8, 1929. J. J. Vance, Clerk, Celia Cook Davis, D. C.

89 State of .....
County of .....

This day personally appeared before me the undersigned, a duly qualified and acting Notary Public in and for the County and State aforesaid, Gerald Fitzgerald, agent and attorney for S. B. Cramer, plaintiff, who having been by me first duly sworn, states on oath that the matters and facts alleged in the foregoing supplemental bill and application for a receiver, are true as therein stated, and that those matters and facts alleged on information and belief affiant believes to be true.

Affiant further states that his principal lives more than 500 miles from the place of trial of this cause and hence is not present to make this affidavit personally but that affiant is authorized to make said affidavit as agent and attorney for the plaintiff.

GERALD FITZGERALD.

Sworn to and subscribed before me, this the 18th day of December, 1928.

E. J. MULLEN,
Notary Public.

Filed Jan. 8, 1929. J. J. Vance, Clerk, Celia Cook Davis, D. C.

90 INTERROGATORIES TO BE PROPOUNDED TO ..... PRESIDENT OF THE OAKHURST COMPANY.

No. 1. Please produce stock books and all books of accounts, ledgers, and cash books, banking books and statements showing capital stock paid in, when paid in, by whom paid in, and whether said stock was issued for cash and/or in exchange for property.

No. 2. Also produce minute books of the corporation since its organization, up to this date.

No. 3. Please file, under oath, statement from your books showing when each share of stock was issued therein, and for what consideration, whether cash money, property or notes, attaching a copy of any and all notes and description of property received by the company in payment of stock.

No. 4. Please attach statement of all bills receivable and bills payable, whether heretofore paid or now unpaid, which have been issued by or received by the Company since its organization.

No. 5. Please state whether the Oakhurst Company now claims to be the owner of that certain judgment granted in favor of the Missouri State Life In-

surance Company as against W. P. Holland in the District Court of the United States for the Delta Division of the Northern District of Mississippi, at the January term, 1923, thereof, and if you state that the Company does claim to be the owner
91 please attach an assignment thereof, or copy of the same, and state the consideration paid therefor by the company.

(Indorsed): Filed 8, 1929. J. J. Vance, Clerk. Celia Cook Davis, D. C.

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92 DECREE.

S. B. Cramer, et al., Plaintiffs,
vs. No. 129, In Equity.
Florence T. Holland, et al., Defendants.

This cause coming on this day to be heard at this term upon all the pleadings, evidence and proceedings herein, and all of the parties hereto being duly and legally before the Court in person, or by attorneys, the said cause having been argued and submitted to the Court; and the Court having duly considered the same, does hereby adjudge and decree as follows:

1.

W. P. Holland, named in the pleadings in this cause is justly and lawfully indebted to the plaintiff and interveners, by reason of the judgments rendered by this Court, on the dates hereinafter mentioned, in the amounts as follows, to-wit:

Chemical National Bank of New York City $19,654.63, inclusive of interest to this date.

Canal Bank & Trust Company	773,340.41
Hibernia Bank & Trust Co.	856,992.28
Philadelphia National Bank	597,751.19
Continental Illinois Bank & Trust Co.	917,735.46
Citizens & Southern National Bank ...	146,276.48
Mississippi Valley Merchants State Tr. Co.	486,933.52
Irving Trust Company	1,242,147.15
Bank of America	322,612.19
Chemical National Bank	803,052.43
Hanover National Bank	305,047.74
93 Bank of Commerce & Trust Company	212,684.65
National Bank of Kentucky	231,231.36
First National Bank of Boston	584,774.83

The last mentioned judgments, except that in favor of the said Chemical National Bank, now aggregating $19,653.63 as aforesaid, were rendered by this Court on April the 16th, 1930.

And the said W. P. Holland is also lawfully and justly indebted to the said Canal Bank & Trust Company by reason and because of a certain judgment or personal decree rendered by the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, on the ... day of ....., 19.., in cause number 3851, styled in said Court, Canal Bank & Trust Company vs. Earl Brewer, et al., which judgment inclusive of interest to date aggregates $112,497.42, the total aggregate amount of said judgments, exclusive of interest on those judgments rendered as aforesaid on April the 16th, 1930, and exclusive of interest on the other judgments herein mentioned aggregate and total to this date the sum of $7,612,730.84, and the said indebtedness so evidenced by said judgments and so hereby decreed is hereby declared to be fixed as a lien from the date of the filing of the original

bill in those causes, upon the entire estate of the defendant Florence T. Holland, consisting of property, real, personal and mixed, and of every kind whereso-ever situated and especially upon that property as hereinafter described, and the said estate of Florence T. Holland is hereby declared to be and to have been from May the first, 1920, a trust fund held
94 in trust by the said Florence T. Holland for the benefit of the plaintiff and interveners in this cause hereby decreed to be and to have been creditors of the said W. P. Holland.

2.

That William A. Schmitt be appointed receiver of this Court of the entire estate of Florence T. Holland, and she, the said Florence T. Holland, and all other persons whomsoever, are hereby directed and commanded to deliver to him, as such receiver, forthwith all the property of every kind and character by her, them, or any of them, held, which said property, when so delivered to said receiver shall be subject to the further orders of this Court.

Said receiver shall first give a bond in the sum of twenty five thousand dollars in some surety company qualified to do business in Mississippi, said bond to be conditioned according to law.

There is hereby adjudged to exist against the entire estate of the said Florence T. Holland a lien on behalf of the plaintiffs above named, and each and every one of them, as of the date of the filing of the original bill in this cause, in the proportion which the amount of the judgments each herein individually described bears to the entire amount of the said judgment, being fixed on the basis of said proportion. When, if, and after the said receiver shall
95 have paid said amounts so severally due the said plaintiffs under this lien so thus im-

pressed, with interest thereon, he shall then deliver the remaining and undisposed of property, and/or cash, to the said Florence T. Holland or to whomsoever is thereto lawfully entitled.

Said receiver is vested with the power to sell and dispose of said property for cash or credit, subject to the approval from time to time of this Court, said disposition to be upon such terms and conditions as may be from time to time by this Court approved. The Court hereby reserves to itself full jurisdiction of this cause to make such other and further orders as it may deem proper, and as equity may require, both as to increasing the amount of the estate and/or increasing the amount due and owing to any party plaintiff, and/or uncovering additional property and disposing of any adverse claims that may be interposed as against any portion of said estate.

Said Florence T. Holland is hereby commanded to deliver to the said receiver the following specific articles of property, the same belonging to said Florence T. Holland, located in the State of Mississippi, to-wit:

Stocks.

	Certificate No.	No. Shares.
Bank of Lambert Stock:		
	19	50
	20	4
Bank of Lula Stock:		
	129	40
96	135	2
	136	5
Bank of Hollandale Stock:		
	341	2

Also 56½ shares of stock in Bank of Hollandale, certificate numbers unknown, sold to Paul Holland on or about October 31, 1929.

Bolivar County Bank:

352	10½

Peoples Bank of Jonestown:

21	31-1/3
22	2

Planters National Bank:

10	5
11	5
13	5
113	25
116	10
119	10
123	13
126	15
127	400
133	5
135	163
141	5
131	5000

97 Also 1000 shares stock in Planters Bank pledged with Grenada Bank, Grenada, Mississippi, on notes of W. D. Garner; and 500 shares of Planters Bank Stock pledged with Grenada Bank on note of Florence T. Holland.

Oakhurst Company:

8	1
19	698

Also 51 shares stock Oakhurst Company, certificate numbers not known.

Stonewall Life Insurance Co.:

225	50
473	5

Masonic Temple Assn. of Clarksdale:

150	2

Ruleville Hotel Co.:

30	5

Moon Lake Fishing Club:

3	1

Niib Kaje Ckyd:

17	1

Coahoma County Club:

50	1

Name of Corporations.	Certificate No.	Shares of Stock.
Planters Mfg. Co.:		
	371	2
	398	127
98	401	20
	412	16
	421	307
	434	30
	517	60

Also 614 shares of Planters Manufacturing Co. Stock issued in the name of W. D. Garner;

Also 326 shares of Planters Manufacturing Co. stock issued in the name of Paul Holland.

Mississippi Cottonseed Products Co. (Preferred):		
	P 059	22
	P 074	11

Mississippi Cottonseed Products Co. (Common):		
	C 0112	21
	C 0141	36
Herrin Crutcher Co.:		
	20	1
Southern Central Life Ins. Co.:		
	111	5
Citizens Bank & Trust Co. Belzoni:		
		2

Notes.

Name.	Amount.
Planters Mfg. Co.	$52,500.00
E. L. McMurch	10,000.00
L. C. Franklin	750.00
F. M. Owens	40,000.00
W. P. Holland	39,754.22
W. P. Holland	500,408.00
W. K. Jerrin, Jr.	22,500.00
Gidden & Townsend	46,000.00
J. E. Townsend	10,000.00
Paul Holland	16,300.00

Cash in Banks.

Planters National Bank	$3,064.94
Bank of Hollandale	1,712.20
Bank of Lula	150.00
Progressive State Bank	206.07
Bank of Ruleville	20.00
Peoples Bank of Jonestown	150.00

Grenada Bank	350.29
Planters Trust & Savings Bank	110.00
Currency in safe at residence	1,660.00

Also, note of Minnie Brewer (with collateral of Bobo bonds attached thereto) in amount of $21,900.00.

100 Accounts Receivable.

Name.	Amount.
H. J. Lawler	$ 757.59
Phil Miller, Lambert Place	2,851.57
R. L. Payne	645.82
Joe Dabs	6.50

Other Property.

Boats in Moon Lake.
Chrysler Automobile.
Ford auto truck.
Packard Car.
Live stock, horses, and cattle at residence.
Remington Guns.
Johnston Motor at Moon Lake.

Household furniture, rugs, etc., at residence and residence curtilage, contents, appurtenances therein and thereunto belonging in Clarksdale, Miss., and that these properties so thus delivered be made a portion of the receivership property; that said Florence T. Holland be, and she is hereby, enjoined and restrained, either personally, through her agents or attorneys, from directly or indirectly distributing, disposing or mortgaging, or otherwise alienating or incumbering any property of which she is seized, possessed, and/or has under her control in whatsoever character.

101 XVI.

This Court reserves full jurisdiction of the cause to make any other and further orders which may be found from time to time essential for the creation, preservation, and/or disposition of the relative rights of the several parties hereto, or any claimants of any portion of the estate, now or hereafter created.

XVII.

The real property hereunder dealt with is described as follows:

Eldorado Place, described as follows, said place being in Madison County, Mississippi:

A one-third undivided interest in

The West Half of the Southeast Quarter of Section 3, and the East Half of the Southwest Quarter, less 20 acres off the West side thereof, and the East Half of the Northeast Quarter and the Northwest Quarter, less 30 acres, off the East side thereof, and the Southeast Quarter less 5 acres out of the Northeast corner thereof, less 2 acres out of the Southeast Corner thereof; Section 10, all in Township 11, Range 3 East.

The following described property in Coahoma County, Mississippi:

That certain tract of land lying along the right bank of the Sunflower River, described as follows:

102 Beginning at a stake on the west boundary line of Section Fourteen, eight Hundred sixty feet due north of the corner of Sections Fourteen, Fifteen, Twenty-two and Twenty-three, thence south

sixty degrees forty-five minutes east, three hundred forty-six feet to a point, which is the point of beginning of the following described land; thence due north three hundred twenty-five feet to the center of Sunflower River; thence eastwardly following the thread of the center line of said river to the point of intersection of said center line with the north line of Second Street, of the City of Clarksdale; thence south seventy-five degrees thirty minutes west two hundred eighty feet to the south east corner of the Fire station lot on the north side of Second Street; thence north fourteen degrees and thirty minutes west; thirty feet to the northeast corner of said lot; thence south seventy-five degrees and thirty minutes west and parallel to the north line of said Second Street sixty feet to the Northwest corner of said Fire Station lot on the East line of Dorr Avenue; thence north thirty-one degrees and fifteen minutes west along the east line of Dorr Avenue, five hundred feet to a point; thence north forty-two degrees and forty-five minutes west, three hundred feet on the east line of Dorr Avenue; thence north thirty degrees and fifteen minutes west one hundred forty feet on the east line of Dorr Avenue; thence north one degree and forty-five minutes west two hundred feet to a point on the east line of Riverside Avenue; thence nine degrees and forty-five minutes east one hundred feet to a point on
103 the east line of Riverside Avenue; thence north twenty-three degrees fifteen minutes east one hundred feet to a point on the east line of Riverside Avenue; thence north four degrees and forty-five minutes east five hundred eighty feet to a point on the east line of Riverside Avenue; thence north twenty degrees and forty-five minutes west one hundred feet to a point in the east line of Riverside Avenue; thence north to a point in the east line of Riverside Avenue; thence north fifty-five degrees and fifteen minutes west one hundred feet to a point on

the north side of Riverside Avenue; thence north fifty-six degrees and fifteen minutes west one hundred sixty feet to a point on the north side of Riverside Avenue; thence north seventy-seven degrees and fifteen minutes west seven hundred feet to a point on the north side of Riverside Avenue; thence north seventy-nine degrees and fifteen minutes west one hundred feet to a point on the north side of Riverside Avenue; thence north seventy-eight degrees and forty-five minutes west one hundred seventy-feet to a point on the north side of Riverside Avenue; thence north seventy-eight degrees and fifteen minutes west six hundred feet to a point; on the north side of Riverside Avenue; thence north eighty-one degrees and fifteen minutes west two hundred seventy feet to a point on the north side of Riverside Avenue; thence South three degrees and twenty-five minutes west one hundred twenty feet to a point on the
104 west side of Riverside Avenue; thence south twenty-five degrees and forty-five minutes west, three hundred feet to a point on the west side of Riverside Avenue; thence south thirty-four degrees and forty-five minutes west three hundred feet to a point on the west side of Riverside Avenue; thence south thirty-six degrees and thirty minutes west two hundred forty feet to a stake on the east side of Oakhurst Avenue; which is also the point of beginning. This tract contains 41.51 acres, of which 11.71 acres is situated in Lot Twelve of Section Fourteen, 23.36 acres situated in Lot Thirteen of Section Fourteen, and 6.44 acres situated in Lot Two of Section Twenty-three, all in township Twenty-seven, Range Four, West.

All Lot Six, containing 39.41 acres, and all that part of Lot Nine, lying north of the center line of Mill Bayou; containing 29.21 acres, except five acres heretofore conveyed to Coahoma County on May 20, 1909,

by deed recorded in Book 24 at page 301 of the Record of Land Deeds in the office of the Chancery Clerk of said County at Clarksdale, Mississippi, and except three acres conveyed to M. K. Wildberger by deed dated November 21st, 1919, and not yet of record, which said three acres is described as follows:

Beginning at an iron stake in the line dividing Sectional Lots Eight and Nine, about two hundred feet north of the center line of Mill Bayou; thence north along the dividing line between said Lots Eight and Nine a distance to give a frontage of two acres to an iron stake; thence west a distance to give
105 a depth of 1½ acres to an iron stake; thence south parallel to said dividing line between said Lots Eight and Nine a distance to give a length of two acres to an iron stake; thence east and perpendicular to the dividing line between said Lots Eight and Nine to the iron stake at the point of beginning. The total acreage herein conveyed being 67.62 acres and all being in Section Fourteen, Township Twenty-seven, Range Four, West; also three acres in the southeast corner of Lot Nine north of Mill Bayou, in Section Fourteen, Township Twenty-seven, Range Four, west, more particularly described as follows:

Beginning at a stake on the line dividing Lots Eight and Nine about two hundred feet from the center of Mill Bayou and north of said Bayou; thence north along the dividing line between said Lots Eight and Nine a distance to give a frontage of two acres to an iron stake; thence west a distance to give a depth of 1½ acres to a stake; thence south parallel to the dividing line between Lots Eight and Nine aforesaid to a stake; a distance to give a depth of two acres; thence east and perpendicular to the dividing line between Lots Eight and Nine to the point of beginning;

also the following described property situate in the City of Clarksdale, County and State aforesaid, to-wit: Lot One and the eastern half of Lot Two; Lot Six and the eastern half of Lot Five, all in Block Sixteen in Oakhurst Subdivision, Lots Number Three and Four and the East Half of Lot Five and the West Half of Lot Two of Block Sixteen of Oakhurst Subdivision. Lots One and Two in Block Nine in the Oakhurst Subdivision.

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Also, the following described property in Coahoma County, Mississippi, to-wit:

Lots numbered One to Ten, inclusive, in Block Eleven of the Dolan and Peacock Oakhurst addition to the City of Clarksdale, Coahoma County, Mississippi.

And the said property is hereafter called "the real property"; and that all transfers and conveyances of said real property described in the pleadings, and attached therein, are hereby adjudged and decreed fraudulent and void as to the receiver and the plaintiffs herein; and the same are hereby canceled and for naught held.

And the transfer and conveyance of those certain judgments of the Missouri State Life Insurance Company vs. W. P. Holland, described as follows:

No. 111, at law, United States District Court, in the sum of $240,524.02, rendered January 27, 1923; and No. 126, at Law, United States District Court, in the sum of $96,579.31, rendered March 24, 1924, which said judgments were transferred and sold by the Missouri State Life Insurance Company to Lacy C. Townes by transfer of date the

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... day of September ....., 1927, by him transferred and assigned to the Oakhurst Company by transfer of date the 2 day of June, 1928, were, and are, fraudulent assignments, and said judgments are decreed to be as to the plaintiffs in this cause void and of no effect, said judgments being hereby decreed to be the property of Florence T. Holland as to plaintiff's herein.

That William A. Schmitt, receiver, is hereby also appointed commissioner of this Court with full power and authority to sell said real property at such time and in such manner as he may determine, after giving public notice thereof for three weeks preceding the date of sale by posting upon the bulletin board of the Courthouse of Coahoma County, Mississippi, at Clarksdale, and by publishing in some newspaper published in Coahoma County, Mississippi, for three weeks preceding the date of said sale.

Said commissioner shall sell the said property in parcels or as a whole as he may determine may be to the best interests of the parties concerned. Said sale shall be made for cash; and the plaintiffs in said cause may bid at said sale as cash by offering to said commissioner a receipt for the amount of such bid for credit upon the several judgment debts due
108 them, as set forth in this decree.

The proceeds of said sale, after deducting the costs and expenses thereof to be fixed and determined by this Court upon the confirmation thereof, shall be distributed to the several plaintiffs in the proportions which each respective judgment bears to the aggregate total of the judgments. The said defendants in said cause, and each of them, are hereby directed to forthwith deliver to said commissioner the possession of said property.

The said Florence T. Holland, her agents, attorneys, and representatives, including W. P. Holland, her agent, are hereby ordered and directed to turn over to the receiver, William A. Schmitt, all books, papers, accounts correspondence, memoranda, records, of every kind, character, and description, now in the hands of the said Florence T. Holland, her agents, attorneys and representatives, or held for them by any person, relative to the estate of Florence T. Holland and especially correspondence and records of every nature with regard to deposits, trading accounts, safety deposit boxes, etc., all of such accounts and accounts mentioned in said paragraph ... to be delivered to said Florence T. Holland within one year from this date.

Any and all persons, firms, corporations and associations of persons, are hereby enjoined and restrained from interfering with or molesting the said receiver in his possession, management, and control of the property delivered, or to be delivered, re-
109 covered, or to be recovered, by him under the orders of this Court.

Said Receiver is hereby invested with full power and authority to institute and/or prosecute in any Court of proper jurisdiction at law or in equity any suit or proceeding against any and all persons whomsoever seeking to recover possession and/or control and/or damages in connection with the rights hereby vested in him.

It is further ordered, adjudged and decreed by the Court that no personal judgment against the said Florence T. Holland is hereby rendered on account of any of the matters and things herein before recited or on account of any of the matters and things com-

plained of in the pleadings in the causes herein before stated and the said receiver, or his successor in office is hereby directed to convey to W. H. Powell by quit claim deed, all of the residence property of the said Florence T. Holland, described as follows, to-wit:

Lots Six and Seven, Block I, in the town of Clarksdale, as described by map of W. L. Polk being made in eighteen hundred and eighty eight and being the present homestead of Florence T. Holland, and all of the furniture in said residence in the City of Clarksdale, Mississippi, and all of the appurtenances appertaining thereto, and also any and all jewelry that she may now own and also all household and kitchen furniture, rugs, also all the household furniture and fixtures, including all rugs, draperies, curtains, dishes, and linens, silver and table ware, knives and forks, and silver plate, pictures, stationery, books, guns and all other personal property of every kind and description in said residence, now in said residence, and also the boats in Moon Lake and Chrysler automobile and Packard car, and Ford Auto Truck, mentioned in this decree, and also the Johnson Motor at Moon Lake mentioned in this decree; and all live stock, horses and cattle at or belonging to or used in and about the said residence of said Florence T. Holland (this of course does not include live stock or implements of any plantation), and the said property hereby ordered to be conveyed by the receiver to W. H. Powell shall be forever exempt from any of the present claims of the parties plaintiff and/or interveners in this suit, the parties plaintiff and interveners expressly agreeing thereto in open Court and likewise said Florence T. Holland are agreeing to the matters and things in this decree contained, the Planters Manufacturing Company not to be prejudiced hereby or William E.

Lamb or Butler Lamb, Foster and Pope, not to be prejudiced hereby. The Receiver's bond being presented to the Court is hereby appeared in open Court.

This 30th day of April, 1930.
E. R. HOLMES, Judge.

Approved:
S. C. C.
W. H. L.,
FLORENCE T. HOLLAND,
E. W. S.,
CUTRER & SMITH,
G. E. WILLIAMS,
111 GERALD FITZGERALD.

E. J. I. Pages 347 to 362 inclusive.

Filed May 2, 1930. B. G. Lowrey, Clerk, Celia Cook Davis, D. C.

112 (Process issued in Cause No. 162-Equity.)

United States District Court, Delta Division, Northern District of Mississippi.

The President of the United State of America,

To William E. Lamb, Greeting:

You are hereby commanded that all excuses and delays set aside you be and appear within twenty days after the service of this subpoena at the Clerk's office of the United States District Court for the Northern Dist. of Mississippi, at Clarksdale, to answer unto the original bill of complaint of William A. Schmitt, Receiver, in said Court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable Allen Cox, United States District Judge at Clarksdale, this 30 day of April, A. D. 1930.

B. G. LOWREY, Clerk,
CELIA COOK DAVIS,
Deputy Clerk.

MEMORANDUM.

The defendant in this case is required to file his answer or other defense in the Clerk's office of said Court, on or before the twentieth day after service of this Writ, excluding the day thereof; other-
113 wise the Bill may be taken pro confesso.

Filed June 10, 1930. B. G. Lowrey, Clerk, C. C. Davis, Deputy Clerk.

UNITED STATES MARSHAL'S RETURN.

Northern District of Mississippi.

Received the within writ the 30 day of April, 1930, and executed same. Personally, by delivering a true copy of the same to, William E. Lamb, as within I am commanded.

This April 30th, 1930.

CHARLES R. LIGON,
U. S. Marshal,

By G. W. WHITEHEAD,
Deputy Marshal.

114 MOTION TO QUASH ATTEMPTED SERVICE OF PROCESS.

In the District Court of the United States for the Delta Division of the Northern District of Mississippi.

William A. Schmitt, Receiver, Plaintiff,
vs. No. 162-In Equity.
William E. Lamb, Defendant.

(Motion to Quash Process in Cause No. 162-Equity.)

Now comes William E. Lamb, named in the original bill of complaint as defendant therein, and entering a special appearance for the purpose of moving the Court to quash the attempted service of process on him and for no other purpose whatsoever, he moves the Court to quash said attempted service of process purporting to have been made upon said William E. Lamb on the 30th day of April, 1930, on the ground that he was then and there privileged and immune from service of any process issuing from this Court in this case, and for cause shows the following facts, to-wit:

1. That said William E. Lamb was at the time of said attempted service of process upon him, a citizen of the State of Illinois and a resident of the City of Evanston, in the County of Cook, in the State of Illinois, which said City and County are in the Northern District of Illinois, Eastern Division, and in the Seventh Judicial Circuit, and not in this, the Northern District of Mississippi, or in this, the
115 Fifth Judicial Circuit.

2. That said William E. Lamb, at the time of attempted service as aforesaid, was in said Northern

District of Mississippi under compulsory process in compliance with a certain citation issued to him from this Court and served upon him on the 21st day of April, 1930, in the case of S. B. Cramer, et al v. Florence T. Holland et al., No. 129 in Equity, and requiring his appearance in this Court, to-wit, the District Court of the United States for the Northern District, Delta Division, of Mississippi, and requiring his presence in said Northern District of Mississippi until the disposition of the said citation in so far as the same concerned said William E. Lamb. True and correct copies of the petition pursuant to which said citation was issued and of said citation as served upon said William E. Lamb are attached as Exhibits A and B, respectively, and by this reference made a part hereof. Said William E. Lamb appeared in answer to said citation at the time required therein, to-wit, on April 22, 1930, at Clarksdale, Mississippi, at which time the matter was postponed subject to being called up for hearing before Honorable E. R. Holmes, Judge of said Court, at Yazoo City, Mississippi, at such time as final decree might be presented at said place aforesaid to said Judge in said cause, No. 129 in Equity.

3. That said William E. Lamb at and prior to the time of attempted service as aforesaid was attorney of record in certain cases then and there pending in the District Court of the United States for the Northern District, Delta Division, of Mississippi, being
116 attorney of record for defendant, W. P. Holland, in causes Nos. 230 to 242, inclusive, at Law, being suits of various banks, against said W. P. Holland, and being attorney of record for defendant, Florence T. Holland, in cause No. 129 in Equity aforesaid, in which the plaintiffs in said Law action became interveners on or about April 17, 1930; that

said Law actions had been tried and concluded on April 16, 1930; that said cause No. 129 in Equity was tried beginning April 17, 1930, and decision therein was rendered by the Honorable E. R. Holmes, Judge of said Court, on April 21, 1930, and that from April 21 to April 30, 1930, said cause was pending subject to entry of final decree, to be called up on notice.

4. That on April 30, 1930, at Yazoo City, Mississippi, before the Honorable E. R. Holmes, Judge of the District Court aforesaid, said William E. Lamb appeared in answer to said citation, following the entry of final decree in said cause No. 129; that after his appearance in response to said citation said Judge entered an order continuing the hearing on said citation until June 9, 1930, at Biloxi, Mississippi, and copy of said order is attached hereto as Exhibit C; that immediately following the entry of said order, Exhibit C, said William E. Lamb started on his return to his residence in said State of Illinois and while en route to his said residence, having arrived at Clarksdale, Mississippi, and there awaiting the next train which he could take for his residence in Illinois and before the departure of any train he could take from Clarksdale for his residence, he was served
117 with a subpoena issued from this Court in the above entitled cause.

5. Said William E. Lamb, at the time of attempted service as aforesaid, had no other business which necessitated or caused or required him to be in said Northern District of Mississippi, nor was he there in pursuit of pleasure or for any other cause or reason whatsoever than as hereinbefore set forth,

6. Except for the matters hereinbefore set forth, said William E. Lamb would not have been in the

Northern District of Mississippi at the time of the attempted service of process upon him.

WILLIAM E. LAMB.

W. C. WELLS,
Solicitor for William E. Lamb, appearing especially for the purpose of moving to quash service of process and for that purpose only.

118 State of Illinois,
County of Cook. ss.

William E. Lamb, being duly sworn, doth depose and say that he is the person who makes the foregoing motion, that he has read the same and knows the contents thereof, and that the same is true to his own knowledge.

WILLIAM E. LAMB.

Subscribed and sworn to before me this 13th day of May, A. D. 1930.

FRANCES C. ROBERTSON,
Notary Public.

119 EXHIBIT A.

In the District Court of the United States for the Delta Division of the Northern District of Mississippi.

Sterling B. E. Cramer,
vs. No. 129 In Equity.
Florence T. Holland.

To the Honorable E. R. Holmes, Judge, etc.:

And now comes the plaintiffs and show to the Court that in the evidence taken on the final trial in the above styled cause it appears that the defend-

ant, Florence T. Holland, and her agent, W. P. Holland, have during the pendency of this litigation and utterly disregarded the rights and privileges of the plaintiffs, and the equities in this cause, and the dignity, power and authority of this Honorable Court, and in contumacious and contemptious disregard thereof, have, in order to further, hinder and delay the creditors of the said W. P. Holland, done the following acts:

1. That the said defendant and her agent, W. P. Holland, conspiring together have during the pendency of this litigation and within the past days fraudulently transferred to W. D. Garner, the brother-in-law of the defendant, one thousand shares of stock of the Planters Bank of Clarksdale, Mississippi, described in the original bill filed herein, and on which by virtue of the law and the statutes of the State of Mississippi, the plaintiffs statutes of the State of Mississippi,
120 the plaintiffs claimed and had a lien from the date of the filing of this suit. The manner of such transfer, as shown by the evidence, was that the said W. P. Holland, agent of the defendant, and the fraudulent grantor of the original property described in the bill herein, still remaining in possession of the property which it is alleged he fraudulently transferred before the filing of the original bill, made a simulated sale of said one thousand shares of stock to the said W. D. Garner, and took therefor the note or notes of the said W. D. Garner at a price of Fifty Dollars ($50.00) per share less than the book value thereof, and at the same time took from the said W. D. Garner a written agreement that the defendant might buy back from said Garner "at the same price" (not even including interest and presumably for the surrender of the notes aforesaid) the said stock. The said W. P. Holland, agent as aforesaid, then attached the stock to the said notes and delivered the same

to the Bank of Grenada, a corporation organized and doing business under the laws of the State of Mississippi domiciled at Grenada, Mississippi and/or to J. T. Thomas, personally or as the president of said corporation, and alleged that he received therefore One Hundred Thousand Dollars ($100,000) in cash (the book value of such stock and plaintiffs be-
121 lieve the actual value being more than a Hundred Sixty Thousand Dollars ($160,000). In this connection plaintiffs allege that the said Bank of Grenada through its officers and the said J. T. Thomas personally had full and complete as well as constructive notice of the pendency of this litigation and of all of the facts and circumstances surrounding the same.

2. Plaintiffs allege that the said defendant and her said agent W. P. Holland, took the said One Hundred Thousand Dollars, as shown by the evidence already introduced by this Honorable Court, and in further disregard of the dignity, power, and authority of this Court attempted to dissipate the same so as to further hinder and delay the plaintiffs and the equities of this Court by paying Forty Thousand Dollars thereof, it is alleged to J. T. Thomas personally, or as president of the Bank of Grenada, for an old alleged indebtedness alleged to be due to the said Thomas by W. P. Holland, personally. The other Sixty Thousand Dollars thereof to pay an indebtedness due the Grenada Bank, as it is alleged, for an indebtedness of the said Florence T. Holland, contracted, the plaintiffs now allege, with full knowledge on the part of all parties of the pendency of this litigation and the equity of the plaintiffs, and contracted since the filing of the bill herein.

3. Plaintiffs allege that the defendant, Florence T. Holland and her said agent, W. P. Holland, so conspiring as aforesaid, have within the past ... days under

the circumstances aforesaid, in contemptu-
122 ous and contumacious disregard of the power and authority of this Honorable Court transferred by simulated gift to Mrs. Anna T. Garner, the wife of W. D. Garner mentioned above, more than Ninety Thousand Dollars ($90,000) of cash and negotiable security, mentioned and described in the original bill herein and on which the plaintiffs claim lien; that said transfer was wholly simulated and in fraud as aforesaid.

4. Plaintiffs allege that Florence T. Holland, and her said agent, W. P. Holland, conspiring together for the purposes aforesaid; and with the contemptuous disregard, etc., aforesaid, together with Messrs. Butler, Lamb, Foster & Pope, their attorneys, and especially Messrs. Karl D. Loos and William E. Lamb both said attorneys lastly said having been admitted by this Court as officers of this Court the practice before this Honorable Court disregarding the rights of the plaintiffs herein and the power and authority of this Court have transferred, set over and assigned to the said William E. Lamb and Karl D. Loos of the firm of attorneys aforesaid, a part of the trust fund herein sued for, to-wit: approximately Ninety Thousand Dollars ($90,000) of said trust fund. Plaintiffs allege that the said attorneys and all the parties concerned in said transfer actually and constructively know that the said property and money so transferred was a part
of the trust fund herein sued for held by the
123 defendant under the power and direction of this Court to be disposed of only with the equities of all parties in view and by order and consent of this Honorable Court.

5. Plaintiffs allege that in the scramble to contemptiously and contumaciously get rid of all the property herein sued for, and upon which the plain-

tiffs claim lien, all of which was and is in the constructive possession and under the power and authority of this Court, the defendant and her, agent, and attorneys have transferred in manner not now known to the plaintiffs various other monies and property by covenous practices and fraudulent schemes, so that now it appears from the statement of the defendant and her agent upon the witness stand that the bulk of the estate herein sued for has been dissipated during the pendency of this litigation and while under the authority of this Court in utter and complete contemptious and contumacious disregard of this Court of equity and its power, right and authority.

The premises considered the plaintiffs pray this Court that citations be issued to the various parties mentioned above concerned in the transactions aforesaid, citing them to appear before this Honorable Court upon a day to be named by the Court, there to show cause why they shall not be held in contempt of this Court.

Therefore and for the further purpose if the same shall appear necessary of canceling and setting aside the various alleged covenous, fraudulent and nefarious transfers aforesaid, that this Honorable Court, for the purpose of carrying out and effectuating such decrees this Honorable Court may render in
124 the man cause herein, that each, all and every of the above mentioned parties, and other parties who may appear to be concerned in the said transfers, be made parties to cause by proper process returnable as required by law, and that upon final hearing hereof your Honor grant to the plaintiffs full and complete general relief herein as to equity may seem meet, but that in the meantime your Honor may issue herein said temporary restraining order as may appear necessary to prevent the further transfer by

gift, or otherwise of the corpus of the estate herein sued for, and that such temporary restraining order be supplemented by writs of injunction to be granted hereinafter, permanently and wholly restraining and enjoining all persons from further transferring and disposing of the property sued for, and/or involved in this litigation.

Respectfully submitted,
GREEN, GREEN & POTTER,
MAYNARD, FITZGERALD,
& VENABLE,
ROBERSON & COOK.

125 EXHIBIT B.

Sterling B. Cramer, et al., Plaintiff,
vs. No. 129, In Equity.
Florence T. Holland, Defendant.

This day this cause came on to be heard on the sworn petition of the plaintiffs, the same being now on file and, it being therein alleged that there were certain alleged transfers to W. D. Garner, Grenada Bank, J. T. Thomas, Anna T. Garner, Carl D. Loos, and William E. Lamb, severally and respectively as therein appears, and it being alleged that said transfers of said property to said parties were made by the defendant herein after this Court obtained jurisdiction over said property therein described with intent to hinder, delay and defraud the plaintiffs of their rights therein, and to deprive this Court of its jurisdiction thereover;

And it being alleged to this Court that there was heretofore herein filed a suit by Sterling B. Cramer to set aside certain fraudulent conveyances as therefrom

more fully appears on the records of this Court, and that intervention was therein allowed to other plaintiffs;

And it further being alleged that jurisdiction of this Court attached to said property described in said pleadings and not alleged to have been transferred, and this Court being vested with full jurisdiction therefor to administer the same;

126 And it further being alleged that as to said W. D. Garner, J. T. Thomas and the Grenada Bank, the property so transferred, or alleged to be consisted of one thousand shares of the capital stock of the Planters National Bank, and one hundred thousand ($100,000.00), dollars in cash;

And it further being alleged that the transfer to Anna T. Garner consisted of the transfer of ninety thousand dollars approximately in cash, and negotiable security;

And it further being alleged that the transfer to the said Wm. E. Lamb and Carl D. Loos consisted of the sum of approximately ninety thousand dollars in cash;

And it further being alleged that the transfer to Milton R. Jones and the Planters Manufacturing Company consisted of the sum of approximately thirty two thousand dollars;

And it further being alleged that all of said property was in the constructive possession of this Court in a suit lawfully pending and proceedings therein being regularly had, and that said transfers, if made, were of the property in the possession and under the con-

trol of this Court, and that it is essential that in order to preserve its jurisdiction and authority that this order should be made, then,

Now, therefore, it is hereby ordered, adjudged and decreed that a copy of this decree be forthwith served upon each of the above named parties, severally, and that they and each of them, severally and respectively be commanded to be and appear before this
127 Court, the Honorable Edwin R. Holmes presiding as District Judge in the Court room at the Court House at Clarksdale, Mississippi, at nine A. M., April the twenty-second, nineteen hundred and thirty, then and there severally and respectively to show cause, if any they have or can, why they and each of them should not be adjudged to be in contempt of this Court under the allegation as to them made that they and each of them accepted transfers of property in the possession of this Court, with the intent to hinder, delay and defraud this Court in the exercise of its jurisdiction with reference to said property and every part thereof.

And it is further ordered, adjudged and decreed that said parties and each of them further appear at the time and place mentioned, and severally and respectively show cause, if any they have or can, why they should not be adjudged to hold all of said property described subject to the jurisdiction of this Honorable Court, to be dealt with by this Honorable Court as fully and completely as if said transfers had never been made, and said property and every part thereof had remained in the possession and under the control of this Honorable Court;

It is further ordered, that said parties and each of them show cause if any they have or can, why they and each of them should not be severally adjudged in

contempt of this Court, and therefor punished in manner and form as equity and good conscience and the dignity and authority of this Court may demand.

128 It is further order... that the copy thereof be delivered to the Marshal of this Court to be by him personally severed upon each of the above named defendants, and that pursuant thereto that said main parties be made parties to this cause and do herein appear and show cause why that asked by plaintiffs asked should not be done and why that the essential to maintain the dignity and authority of this Court be not performed.

Ordered, adjudged and decreed this April the 21st, 1930.

E. R. HOLMES,
District Judge.

129 EXHIBIT C.

In the District Court of the United States for the Delta Division of the Northern District of Mississippi.

S. B. Cramer, Plaintiff,
vs. No. 129 in Equity.
Florence T. Holland, Defendant.

There came before this Court this day for hearing the citation issued on April 21, 1930, against William E. Lamb in the above entitled cause, said William E. Lamb appearing in person and plaintiffs and interveners being represented by their counsel, Messrs. Gerald Fitzgerald, Sam C. Cook and Garner Green.

By agreement of the parties, it is hereby ordered that said hearing on said citation be continued until June 9, 1930, at ten o'clock A. M., at Biloxi, Mississippi, before the undersigned Judge.

Dated April 30, 1930.

(Signed) E. R. HOLMES,
Judge.

Filed May 16, 1930, B. G. Lowrey, Clerk, C. C. Davis, D. C.

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130 AFFIDAVIT OF WILLIAM E. LAMB IN SUPPORT OF HIS MOTION TO QUASH SERVICE OF PROCESS.

In the District Court of the United States for the Delta Division of the Northern District of Mississippi.

William A. Schmitt, Receiver, Plaintiff,
vs. No..... in Equity.
William E. Lamb, Defendant.

State of Illinois,
County of Cook, ss.

Personally appeared before me, the undersigned notary public in and for the County of Cook, in the State of Illinois, William E. Lamb, who, being by me duly sworn, states on oath as follows, to-wit:

That affiant is the William E. Lamb named as defendant in the above styled cause and for the purpose of entering special appearance only, for the sole object and purpose of moving the Court to quash the

attempted service of process upon him and for no other purpose whatsoever, he makes this his affidavit, attached to said motion, in support thereof.

That affiant is a citizen of the State of Illinois and a resident of the City of Evanston, County of Cook and State of Illinois, which said city and county are in the Northern District of Illinois, Eastern Division, and the Seventh Judicial Circuit; and that he was a citizen and resident as above set forth at the time of the filing of the above styled suit and at the
131 time of the attempted service of process upon him and has been at all times since January 1, 1911, and is now, a resident and citizen as aforesaid and has at no time been a resident or citizen of the State of Mississippi or a resident of the Northern District of Mississippi or the Fifth Judicial Circuit.

Affiant further says that the attempted service of process upon him in the above styled cause was made upon him about 8:00 o'clock in the evening on the 30th day of April, 1930, at the City of Clarksdale, Mississippi, in the Northern District of Mississippi, while he was present in the said district under compulsory process n compliance with the citation issued to him from this Court and served upon him on the 21st day of April, 1930, in the case of S. B. Cramer, et al., vs. Florence T. Holland, et al., No. 129 in Equity, and requiring his appearance in this Court, to-wit, the District Court of the United States for the Northern District, Delta Division, of Mississippi, and requiring his presence on April 30, 1930, in said Northern District of Mississippi for that purpose. True and correct copied of the petition pursuant to which said citation was issued and of said citation as served upon this affiant, are attached as Exhibits A and B,
132 respectively, to the motion to quash herein.

Affiant further says that at and prior to the time or service of citation upon him as aforesaid, he was one of the attorneys of record for Florence T. Holland, defendant in said Cause No. 129 in Equity and was also one of the attorneys of record for W. P. Holland, defendant in causes Nos. 230 to 242 at law, then pending in this Court, being suits of certain creditor banks, which thereafter became interveners in said cause No. 129 in Equity; that said causes at law had been tried before this Court beginning April 14, 1930, and continuing to April 16, 1930, when judgments were rendered therein against said W. P. Holland; that thereafter plaintiffs in said causes at law intervened in said cause No. 129 in Equity aforesaid and on April 17, 1930, the trial of said cause No. 129 in Equity began and continued through Monday, April 21, 1930; that on the morning of April 21st, before trial of said cause No. 129 in Equity had been completed, said petition, Exhibit A aforesaid, was presented to this Court and said citation, Exhibit B aforesaid, was issued and served on this affiant at the Court room of this Court in Clarksdale while affiant was in attendance on said Court during the closing arguments in said cause No. 129 in Equity on the afternoon of April 21, 1930.

Affiant further says that said citation called for the appearance of this affiant before this Court on April 22, 1930, at 9:00 o'clock A. M.; that after
133 the service of said citation as aforesaid the arguments in said cause No. 129 were concluded on the afternoon of April 21, 1930, and opinion was rendered by this Court in said cause holding for the plaintiff and interveners therein and Court was adjourned and reconvened the following day, April 22, 1930, at or about 9:00 o'clock A. M., at Clarksdale, when, pursuant to said citation, affiant appeared before this Court; that evidence was taken with re-

spect to certain other parties named in said citation, but no evidence was taken with respect to charges made by said citation or petition against this affiant and the Judge announced that he desired to adjourn Court at 11:00 o'clock A. M., and pending negotiations for settlement of said cause No. 129, which were then under way, he would put all matters over, giving the parties an opportunity to settle if they could, and that any further matters to come before him in connection with the final decree might be presented to him on notice at Yazoo City, Mississippi, at which time affiant was required to appear for hearing upon said citation; that thereupon Court was adjourned without further proceedings at that time in connection with said citation.

Affiant further says that following the adjournment of the Court this affiant remained in Clarksdale for the purpose of preparing for hearing on said
134 citation and to be available to appear in answer to said citation whenever notice should be given for the presentation of final decree in said cause No. 129; that negotiations for settlement having been discontinued, notice of presentation of final decree was given on April 28, 1930, for hearing on April 30, 1930, at ten o'clock A. M. before Hon. E. R. Holmes, Judge of said Court, at Yazoo City, Mississippi; that pursuant to said notice and in accordance with the understanding hereinbefore set out as to the hearing on said citation at the time of the presenation of said final decree as aforesaid, and pursuant to understanding had with counsel for plaintiff and interveners in causes No. 129 that the hearing on said citation would be taken up following the disposition of said matters involved in the presentation of final decree, this affiant went to Yazoo City, Mississippi, on the evening of April 29, 1930, and appeared before

said Judge on the morning of April 30, 1930, at ten o'clock A. M. to answer said citation; that affiant also was present for the purpose of making argument in opposition to the proposed final decree in said cause No. 129; that instead of proceeding with the argument as to the form of said final decree, negotiations for settlement were resumed and continued until the afternoon of said day, when a consent decree agreed to by Mrs. Holland, plaintiff and interveners, was signed and entered; that this affiant did not participate in any negotiations for settlement with counsel for plaintiff and interveners, although he was advised
135 from time to time by other counsel for Mrs. Holland as to what was taking place, and did not advise Mrs. Holland with reference thereto because of the possibility that his interest might be considered adverse to that of Mrs. Holland by virtue of service of said citation; that he did not consent to entry of said decree and the decree specifically recites that it is without prejudice to him.

Affiant further says that following the entry to the consent decree the matter of hearing on the citation was called and after consultation, an order, Exhibit C to said motion to quash, was entered, continuing said hearing until June 9, 1930, at Biloxi, Mississippi, before said Hon. E. R. Holmes; that immediately following the entry of said order affiant left Yazoo City en route to his home in Illinois; that he made the journey from Yazoo City as far as Clarksdale, Mississippi, by auto, arriving at Clarksdale about 8:00 o'clock P. M. on April 30, 1930, from which point he intended to continue his journey to his home by train; immediately upon his arrival at Clarksdale and before the departure of any train he could take from Clarksdale for his residence in Illinois, the attempted service of

process in the above styled cause was made upon him as aforesaid; that said attempted service of process was made upon him before he could leave the State of Mississippi and return to his home and place of residence in the State of Illinois by reasonable and usual methods of travel; that on the follow-
136 day, to-wit, May 1, 1930, taking the first through train available after his arrival in Clarksdale for a continuous trip to his residence, he left Clarksdale on the afternoon of May 1, 1930, going directly to his residence in said State of Illinois.

Affiant further says that at the time of the filing of the above styled suit and at the time of the attempted service of process upon him on April 30, 1930, in this cause, he had no other business which necessitated or caused or required him to be in said Northern District of Mississippi, nor was he there in pursuit of pleasure or for any other cause or reasons whatsoever, other than as hereinbefore set forth, and except for said matters affiant would not have been in said Northern District of Mississippi at the time of the attempted service of process upon him.

Further affiant sayeth not.

WILLIAM E. LAMB.

Sworn to and subscribed before me this 13th day of May, 1930.

FRANCES C. ROBERTSON,
Notary Public.

My commission expires April 16th, 1934.
(Stamped)

Filed May 16, 1930.

137 (MOTION TO RE-OPEN EVIDENCE.)

In the District of the United States for the Delta Division of the Northern District of .....

William A. Schmitt, Receiver,
vs. No. 162 In Equity.
William E. Lamb.

Comes the Receiver and respectfully requests the Court that he be allowed to reopen the record in this cause and introduce in evidence before the Court on the motion to quash the service and return herein in addition to the matters and facts now before the Court, the following evidence:

1. The Original Bill in Cause No. 129.

2. The amended bill in Cause No. 129.

3. Final decree in Cause No. 129.

4. Answer and affidavit of Wm. E. Lamb in answer to motion to show cause as for contempt in Cause No. 129, as an admission against interest.

5. Affidavit of Joseph F. Ellis, filed 9/11/30.

6. Amendment of affidavit of Joseph F. Ellis.

The Court's attention is called to the fact that Attorney Sam C. Cook, one of the attorneys for the Receiver, submitted items numbered above 4, 5 and 6 to this Court as evidence of date the 11th day of September, same having been marked filed by the
138 Clerk as of that date and forwarded to the Court with brief of Mr. Cook of that date,

and counsel were under the impression that the Court considered them in evidence until informed to the contrary this day.

Respectfully submitted this 8th day of October, A. D. 1930.

MAYNARD, FITZGERALD
& VENABLE,
ROBERSON & CO.,

Filed Oct. 9, 1930.

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139 (ORDER ON MOTION TO RE-OPEN EVIDENCE.)

(Title Omitted.)

Coming on the Receiver's motion to be allowed to introduce further evidence on the motion to quash the service and return herein, it is ordered that the cause be reopened and additional evidence be admitted on said hearing to quash, as follows:

1. Original bill in Cause No. 129.

2. Amended bill in Cause No. 129.

3. Final decree in Cause No. 129.

4. Answer and affidavit of Mr. Wm. E. Lamb in answer to motion to show cause and as for contempt in Cause No. 129.

5. Affidavit of Joseph E. Ellis filed 9/11/30.

6. Affidavit of Sam C. Cook, filed 9/11/30.

7. Amendment of affidavit of Joseph F. Ellis to which the defendant excepted and his exceptions was granted in open Court.

Ordered and adjudged this 9th October, 1930.

E. R. HOLMES,
District Judge.

Filed Oct. 9, 1930, Order Book 2, page 248.

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140 ANSWER OF WILLIAM E. LAMB TO PETITION FILED IN THIS CAUSE ON APRIL 21, 1930, AND TO THE CITATION ISSUED THEREON.

In the District Court of the United States for the Delta Division of the Northern District of Mississippi.

S. B. Cramer, Plaintiff,
vs. No. 129 in Equity.
Florence T. Holland, et al., Defendants.

Now comes William E. Lamb appearing in this in this cause, specially and for the sole purpose of answering the citation issued herein and served upon him on or about April 21, 1930, and answering the petition upon which said citation was issued, and not otherwise, and for answer thereto, or unto so much thereof and such parts thereof as he is advised that it is material or necessary for him to make answer unto, answering says:

I.

Answering paragraphs 1, 2 and 3 of said petition he says that he and the firm of Butler, Lamb, Foster

& Pope, of which he is a member, and each of the members thereof, were wholly without knowl-
141 edge of any of the matters and things in said paragraph alleged at the time or times they are alleged to have taken place; that they or any of them did not at any time counsel or advise, in any manner or form whatsoever, regarding said transaction as alleged in said paragraphs or regarding any other transaction that in any other guise or manner could or would or purport to accomplish the results as alleged in said paragraphs.

II.

Answering paragraph 4 of said petition he denies that he or the said firm of Butler, Lamb, Foster & Pope, or any member thereof, at any time, in any manner or form whatsoever, conspired either among themselves or with W. P. Holland, or Florence T. Holland, or either of them, or with any other person whomsoever, to have transferred, set over or assigned to him or said firm, or any one of them, any part of any trust fund or of any property of any kind or character in which plaintiff and interveners herein, or any of them, had any interest whatsoever, or right thereto, or lien thereon.

He further denies that he or said firm of Butler, Lamb, Foster & Pope or any member thereof, received from said Florence T. Holland or
142 from W. P. Holland, or either of them, any money or other property constituting part of any trust fund, or any money or other property of any kind or character in which plaintiff or interveners herein, or any one of them, have or had any interest whatsoever, or right thereto, or lien thereon, or any money or other property which was under the control or custody of this Court in any manner of form whatsoever.

He further denies that the original or supplemental bill of complaint in this cause, or other pleading, notice or instrument of any kind or character in this cause or in any other cause pending at any time in the State or Federal Courts of Mississippi, caused any money or property of any kind or character in the hands of said Florence T. Holland, to constitute a trust fund for the benefit of the plaintiff and interveners herein or any of them or that said pleadings or instruments aforesaid, or any of them, gave to plaintiff and interveners or any of them, any right in or title to or any lien upon any money or personal property in the hands of said Florence T. Holland or that said pleadings and instruments aforesaid or any of them constituted notice to anyone that any money or property of any kind or character in the
143 hands of said Florence T. Holland constituted a trust fund for the benefit of plaintiff or interveners, or any of them, or that said plaintiff and interveners or any of them had any interest whatsoever in any money or personal property in the hands of said Florence T. Holland or any right thereto or lien thereon.

He further denies that at any time prior to April 22, 1930, when the Court entered a temporary injunction in this cause, any personal property in the possession of said Florence T. Holland was ever within the custody of or under the control of this Court as a trust fund or otherwise or that it was in any way subjected to the restraint or control of this Court or that its disposition by said Florence T. Holland was restricted in any manner or form.

III.

Answering paragraph 5 of said petition he and said firm of Butler, Lamb, Foster & Pope and each of the

members thereof are without knowledge as to any of the matters and things in said paragraph 5 alleged, except that he admits the estate of said Florence T. Holland is not as great as that alleged by plaintiff in said original bill filed in cause No. 129.

IV.

Further answering paragraph 5 he denies there was ever any attempt on his part or on the part of any other member of said firm of Butler, Lamb,
144 Foster and Pope, individually or collectively, either contemptuously or contumaciously, or in any manner whatsoever, to get rid of any of the property of said Florence T. Holland; and he and said firm of Butler, Lamb, Foster & Pope and each member thereof are without knowledge of any transfers in said paragraph referred to by said Florence T. Holland of any of her properties in any unlawful or covenous manner and are without knowledge of transfers of various other properties or mo eys in said paragraph referred to, if any, by covenous practices or fraudulent schemes, or in any manner whatsoever.

V.

Further answering said petition said William E. Lamb shows that the only property of any kind or character ever received by him or by said firm of Butler, Lamb, Foster & Pope or by any member thereof from said Florence T. Holland or W. P. Holland, or either of them, consisted of checks or drafts and notes, as hereinafter set forth, and that the same were received in the ordinary course of business, in good faith, in payment on account of professional legal services rendered as set forth hereinafter, or for reimbursement of expenses incurred and paid in connection with performance of such services. He denies

that a total of $90,000.00 was so received and shows that the total received as fees and reimbursements of cash disbursements paid exclusive of interest payments on notes and exclusive of one note which has
145 not been paid, was $68,220.54, as hereinafter set forth in detail.

VI.

Further answering said petition said William E. Lamb shows that he is and was during all of the time herein mentioned, an attorney at law, duly admitted to practice in the Supreme Court of the State of Illinois, being the highest Court in said State, with his office in Chicago, Illinois, and is and was during all of said time a resident and citizen of the State of Illinois and that he is and was during all of said time a member of the bar of the Supreme Court of the United States and, as a non-resident attorney of the Northern District of Mississippi, pursuant to the rules of this Court, he was duly admitted to practice in this Court on or about October 21, 1929.

VII.

Further answering said petition, said William E. Lamb says he was first consulted by said Florence T. Holland with reference to professional employment by her on or about August 1, 1928; that on or about August 7, 1928, he accepted employment to represent her in a proceeding before the United States Bureau of Internal Revenue involving a hearing before said Bureau in which she and W. P. Holland, her husband, had been served with notice and subpoenaed to appear and subject themselves to examination under
146 oath and bring with them all books and papers kept by them concerning the properties and incomes of said Florence T. Holland and said

W. P. Holland covering the years 1916 to 1927, inclusive. From the date of employment aforesaid to August 16, 1928, when oral hearing in said tax proceeding commenced at Washington, D. C., said William E. Lamb, Karl D. Loos and E. Barrett Prettyman, members of said firm of Butler, Lamb, Foster & Pope, were engaged in preparing for said hearing, examining books and records, and in constant consultation with said Florence T. Holland and W. P. Holland and with J. R. Clinton, a certified Public Accountant of Clarksdale, Mississippi, and with G. Edward Williams, attorney of Clarksdale, Mississippi; that at said hearing commencing on August 16, 1928, representatives of the Bureau of Internal Revenue made claim for additional income taxes from said Florence T. Holland in a large sum; that said oral hearing continued for two days or more and immediately following said hearing auditors of said Bureau of Internal Revenue, for a period of approximately six weeks, examined the books of said Florence T. Holland and W. P. Holland; that during such examination said Karl D. Loss and E. Barrett Prettyman were in frequent conference with said auditors, furnishing additional data and information and reconciling differences and upon completion of the audit an agreement
147 was reached with the auditors upon a computation of Federal income tax of said Florence T. Holland for the years 1916 to 1927, inclusive, showing additional taxes due in the total amount of $48,713.89, an amount very much less than had been claimed by said Bureau against said Florence T. Holland; that said agreement was reached on or about October 24, 1928, conditioned on its acceptance by said Florence T. Holland on or before October 31, 1928; said computation of taxes as proposed by the Bureau was accepted by said Florence T. Holland and the taxes paid, together with interest thereon; thereafter a closing agreement was entered into in

accordance with Section 606 of the Revenue Act of 1928, whereby all income taxes of said Florence T. Holland for 1916 to 1927, inclusive, were definitely and finally settled; and said closing agreement was executed by the Secretary of the Treasury on or about October 24, 1929, and thereafter delivered to said Florence T. Holland; said employment in connection with Federal income taxes was undertaken before and was separate and distinct from any employment with respect to any of the suits then pending against said Florence T. Holland or W. P. Holland or any of the suits thereafter brought.

VIII.

Further answering said petition said William E. Lamb says that in addition to the taxes claimed against said Florence T. Holland as aforesaid, the
148 Government claimed additional taxes for 1917 to 1920, inclusive, against W. P. Holland in the total amount of $681,163.40, which said amount had been assessed against W. P. Holland in February, 1924; that said Bureau of Internal Revenue sought to enforce collection of said additional taxes assessed against said W. P. Holland, from the estate of Florence T. Holland and if it had been successful in that effort, collection of such additional taxes with interest from February, 1924, would have wiped out the entire estate of Florence T. Holland, including all of the money and property turned over to the receiver appointed by the Court in the final decree entered in this cause; that said William E. Lamb and said firm of Butler, Lamb, Foster & Pope were employed by said Florence T. Holland to contest the efforts of the Government to collect from her the said taxes assessed against said W. P. Holland and in pursuance of that employment said William E. Lamb and his associates in said firm held

numerous conferences with representatives of the Bureau of Internal Revenue and sought to secure reduction in the amount of taxes claimed against said W. P. Holland. In pursuance of its claim against said Florence T. Holland the Government on October 15, 1928, filed its petition of intervention in cause No. 128 in Equity then pending in this Court on removal from the Chancery Court for the Second District of Coahoma County, Mississippi, which cause was thereafter remanded to the State Court; that thereafter the Government also filed petition of intervention
149 in cause No. 129 on or about December 17, 1928; that in each of said petitions of intervention the Government sought to enforce against the estate of said Florence T. Holland its claim for additional taxes against W. P. Holland as aforesaid in the amount of $681,163.40, together with interest thereon from February, 1924, and alleged and claimed that the claims of plaintiff and interveners herein were junior and inferior to the claim of the Government for taxes as aforesaid; that said William E. Lamb and said firm resisted the petitions of intervention so filed by the Government and filed motions to dismiss same on the ground among others, that the collection of said taxes claimed against W. P. Holland was barred by the Statute of Limitations; the claim that said taxes were barred by the Statute of Limitations was also presented orally to the representatives of the Bureau of Internal Revenue at Washington and without said motion to dismiss having been heard by the Court, the Government on the second day of the trial of this cause, dismissed or withdrew its petition of intervention in this cause; the Government thereby abandoned its claim against the estate of Florence T. Holland which was thereafter placed in the hands of the receiver appointed pursuant to the final decree entered in this cause.

IX.

Further answering said petition said William E. Lamb says that in addition to their employment in connection with the additional income taxes
150 claimed against said Florence T. Holland as aforesaid as aforesaid and in connection with the claim of the Government for taxes assessed against W. O. Holland which were sought to be collected from the estate of Florence T. Holland, he and said firm of Butler, Lamb, Foster & Pope were also employed by said Florence T. Holland, in association with other counsel in Clarksdale, Mississippi, to defend her in this cause and in other suits pending against her and against W. P. Holland in both Federal and State Courts; that he entered upon this employment actively on or about December 1, 1928; that pursuant to such employment he and certain of his associates participated in the preparation of numerous pleadings in the various causes, in preparing briefs and arguments attending the taking of depositions pursuant to notices served by attorneys for plaintiff, representing and arguing various motions and participating in the trial of this and other causes.

X.

Further answering said petition said William E. Lamb says that in performing the services pursuant to his employment in the matters aforesaid, he and other members of said firm of Butler, Lamb, Foster & Pope and associates and clerks in said firm devoted large amounts of time to said matters; that most of the time devoted to the matter of the defense against said additional income tax claimed against said Florence T. Holland was separate and apart from any service in connection with the litigated cases
151 aforesaid and was prior to the date when he and said firm engaged actively in services in

connection with said litigated cases; that the time devoted to the defense of said Florence T. Holland against claim of the Government on account of taxes assessed against W. P. Holland as aforesaid was principally spent in connection with and contemporaneously with the time devoted to the litigated cases as aforesaid; that the services performed in connection with the defense against additional income taxes claimed against Florence T. Holland as aforesaid and in connection with the defense of said Florence T. Holland against claim of the Government for collection from her of taxes assessed against W. P. Holland as aforesaid were of substantial importance and of great value in the preservation of the estate of Florence T. Holland and were of benefit and value to the plaintiff and interveners in this cause as creditors of said Florence T. Holland and said services resulted in the preservation of her estate which has since been turned over to the receiver appointed by the consent decree entered in cause 129 and held by said receiver from the benefit of interveners herein.

XI.

Further answering said petition said William E. Lamb says that payments to him and to said firm of Butler, Lamb, Foster & Pope as fees for services rendered in connection with the matters in paragraphs VII, VIII, IX and X set forth, were received as follows:

152 Aug. 7, 1928, Check of Florence T. Holland, $10,000.00 on Planters National Bank of Clarksdale.

Aug. 7, 1928, Note of Florence T. Holland $15,000.00
Aug. 12, 1929, Note of Florence T. Holland $12,500.00
Plus interest 6 months, $333.33.

June 12, 1929, Note of Florence T. Holland $12,500.00
Plus interest 6 months, $333.33.
Oct. 21, 1929, Draft of Planters National Bank $10,000.00
Dec. 16, 1929, Note of Florence T. Holland $12,500.00

Said check for $10,000.00 and said note of $15,000.00 received August 7, 1928, were paid exclusively on account of service in connection with the tax cases aforesaid and were not in any way payments on account of any services whatsoever in connection with any of the litigated cases and at that time no employment in connection with the litigated cases had been accepted by said William E. Lamb or said firm of Butler, Lamb, Foster & Pope. The three notes and the draft for $10,000.00 subsequently received were payments on account of services without separation as between services for tax matters and services in connection with the litigated cases, but applied on account of all services in all matters.

Said check for $10,000.00 received August 7, 1928, was a check of Florence T. Holland drawn on the Planters National Bank of Clarksdale, payable to Butler, Lamb, Foster & Pope, and by said firm deposited and collected.

153 The note of $15,000.00 received August 7, 1928, was a note signed by Florence T. Holland payable December 7, 1928; at maturity it was not paid, but interest thereon of $250.00 was paid, and two new notes in renewal thereof were executed, one for $3,750.00 due March 7, 1929, and one for $11,250.00 due June 7, 1929; said renewal notes were discounted and sold by said firm of Butler, Lamb, Foster & Pope in the usual course of business and for value to the Union Trust Company, as a bona fide purchaser for value; said Union Trust Company was a banking institution engaged in business at Chicago, Illinois, and it thereafter and before the maturity of

said notes became merged or consolidated with the first National Bank of Chicago; that upon maturity of the first of said notes there was forwarded to said First National Bank of Chicago in payment of said note for $3,750.00 due March 7, 1929, a draft in the sum of $3,796.87, including $46.87 interest, drawn on the Continental and Commercial National Bank of Chicago by the Planters National Bank of Clarksdale, and photostat copy of said draft is attached hereto marked Exhibit A; that upon maturity of the second of said notes there was forwarded to said First National Bank in payment of said note for $11,250.00 due June 7, 1929, a draft in the sum of $11,531.25, including $281.25 interest, drawn on the Continental and Commercial National Bank of Chicago by said Planters National Bank, of Clarksdale, and photostat copy of said draft is attached hereto marked Exhibit B; both of said drafts Exhibits A and B aforesaid, were paid through the Chicago Clearing
154 House to said First National Bank.

Said two notes received June 12, 1929, were discounted and sold by said firm of Butler, Lamb, Foster & Pope in the usual course of business and for value to said First National Bank of Chicago, a bona fide purchaser for value, on or about June 12, 1929, said firm receiving credit therefor in the total amount of $24,866.73; upon maturity of said notes on or about December 14, 1929, there were forwarded to said First National Bank two drafts each in the amount of $12,833.33 drawn on the Continental and Commercial National Bank of Chicago by said Planters National Bank, being in payment of said two notes and photostat copied of same are attached hereto as Exhibits C and D, respectively; and said drafts were paid through the Chicago Clearing House.

Said draft of $10,000.00 received by said firm of Butler, Lamb, Foster & Pope on October 21, 1929, was dated October 18, 1929, and drawn on the Guar-

anty Trust Company of New York by said Planters National Bank, payable to Butler, Lamb, Foster & Pope, the same being deposited by said firm in the usual course of business in the First National Bank of Chicago, and a photostat copy of same is attached hereto as Exhibit "..

Said note for $12,500.00 received December 16, 1929, had not been paid.

XII.

Further answering said petition said William E. Lamb says: that the foregoing moneys and notes are all of the payments received by him or by
155 said firm of Butler, Lamb, Foster & Pope on account of services performed for Mrs. Florence T. Holland or W. P. Holland; that in addition to the payments for services as aforesaid he and the said firm have received the following amounts as reimbursements in connection with the performance of legal services as aforesaid:

Sept. 16, 1928.....	$550.68
Oct. 28, 1928.....	20.78
Dec. 17, 1928.....	146.55
Oct. 21, 1929.....	50.00
Nov. 5, 1929.....	5.00
Nov. 22, 1929.....	100.00
Nov. 25, 1929.....	250.00
Dec. 6, 1929.....	100.00
Dec. 28, 1929.....	250.00
Feb. 4, 1930.....	3,865.93
Feb. 19, 1930.....	100.00
Mar. 10, 1930.....	310.10
Apr. 9, 1930.....	711.17
Apr. 9, 1930.....	1,760.33
	$8,220.54

All the foregoing payments of cash disbursements were made by check of Florence T. Holland to the order of Butler, Lamb, Foster & Pope or to the order of William E. Lamb or to the order of G. C. Lenington, a stenographer employed by said firm, except the sum of $250 which was paid to William E. Lamb on November 25, 1929, in currency. The foregoing payments constitute all payments received by said William E. Lamb or said firm so far as can be determined from a careful search of the records of said William E. Lamb and of said firm and no other amounts either of money or notes or property of any kind or character were ever received by said William E. Lamb or by said firm from said Florence T. Holland or said W. P. Holland or from any one for their account; that said William E. Lamb and his associates in said firm of Butler, Lamb, Foster & Pope received from time to time from said Florence T. Holland or W. P. Holland railroad tickets for use in taking trips incident and necessary to the performance of services in connection with the matters aforesaid but in all such instances the moneys were not paid to him or to said firm but were paid direct to the carrier; that on one occasion also Florence T. Holland paid hotel bill for said Loos and said Lennington, the payment therefore being made direct to the Hotel Alcazar and said money was not paid to said William E. Lamb or to said firms.

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XIII.

Further answering said petition, said William E. Lamb says that at the time said check of $10,000 and said note of $15,000 were received on or about August 7, 1928, he and said Butler, Lamb, Foster & Pope and each and all of the members thereof were without knowledge or information as to the litigation pending in the Federal and State Courts of Mississippi

except the mere fact that there were suits on file, and they and each of them were without knowledge or information either actual or constructive of the source from which the money represented by said check came; that at the time of the payments of the notes by drafts of the Planters National Bank as aforesaid and at the time of the transmission of the draft to Butler, Lamb, Foster & Rope in the sum of $10,000 on or about October 21, 1929, said William E. Lamb and said firm and each of the members thereof were without knowledge or information, either actual or constructive of the source from which the Planters National Bank received the consideration for which it issued said drafts Exhibits A to E inclusive, or with what funds or out of what funds or in what manner or form said drafts were purchased from or paid for to said Planters National Bank. Said William E. Lamb and said firm and its members or any of them did not know at the time of such payments how said notes of Florence T. Holland were paid to said First National Bank of Chicago and did not learn thereof until after service of the Citation herein.

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Said William E. Lamb further says that to the best of his knowledge and belief said First National Bank of Chicago or any of its officers or representatives did not know the source from which the Planters National Bank received the consideration for said drafts sent to it and did not know with what funds or from what funds or the manner in which payment was made to the Planters National Bank for said drafts.

Said William E. Lamb and said firm were also without knowledge or information as to the source of the moneys which were paid to them in reimbursement of cash disbursements as aforesaid, except that they knew that such payments as were made by check came from the account of said Florence T. Holland in the Planters National Bank,

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but they were without information as to the source from which said Florence T. Holland acquired the funds in her account in said bank.

XIV.

Further answering said petition, said William E. Lamb says that the services performed by him and by said firm in connection with the defense against the claims of the Government on account of additional income taxes claimed against Mrs. Florence T. Holland were reasonably worth the sum of $50,000 and such sum would be a usual and customary fee for such services as last aforesaid; that said services resulted in a saving to the estate of Mrs. Florence T. Holland of a large sum, being the difference between the tax tentatively claimed by representatives of the Bureau of Internal Revenue at the time of the oral hearing in Washington on or about August 16, 1928, as aforesaid and the amount which the Government accepted in full payment of all claims for additional taxes against said Florence T. Holland for the years 1916 and 1927 inclusive as aforesaid.

The services performed by him and by said firm in connection with the defense of the estate of said Florence T. Holland against the claims of the
159 Government seeking to collect against her taxes assessed against said W. P. Holland in the sum of $681,163.40, together with interest thereon from February, 1924, as aforesaid and in the defense against the petitions of intervention filed by the Government as aforesaid, were reasonably worth the sum of $25,000 and such sum would be a usual and customary fee for such services as last aforesaid; that said services resulted in the complete rejection and withdrawal of said claim of the Government; that said William E. Lamb upon information and belief says that the plaintiff and interveners herein made no defense

whatever to the Government's claim or to the petition of intervention filed herein which asserted a claim on behalf of the Government paramount and superior to the claims of said plaintiff and interveners herein; and the defense made by said William E. Lamb and said firm on behalf of said Florence T. Holland was the only successful defense made to the Government's petition of intervention and was responsible for the Government's dismissal thereof.

Said services so performed in connection with the defense against the Government's claims for taxes as aforesaid both with respect to the taxes claimed on income of said Florence T. Holland and the taxes assessed against W. P. Holland, were to the benefit and advantage of the plaintiff and interveners herein and and to the benefit and advantage of all
160 others who may hereafter have or claim any interest in or to any part of the estate of said Florence T. Holland; and the services so performed in connection with said matters were reasonably worth all and more than the total amount of money and notes received by said William E. Lamb and said firm as aforesaid.

XV.

Further answering said petition said William E. Lamb says that the services rendered by him and by said firm in connection with the litigated cases as aforesaid, which cases involved amounts claimed by the interveners in said cause 129 in excess of $7,000,000 were valuable and important services rendered Florence T. Holland; that said services were rendered in good faith and in the usual course of business and in the belief that said services would be paid for in the ordinary and usual course and the said William E. Lamb and all of the members of said firm of Butler, Lamb, Foster & Pope, so far as they

had any information or belief regarding said matters, were of the honest belief that all of the property in the hands of Florence T. Holland belonged to her and was her property in law and in fact and that any transfers made by said W. P. Holland to said Florence T. Holland had been made in good faith and for valuable consideration and without fraud or intent to defraud or hinder or delay any creditor or creditors whatsoever and that said services were not rendered for the purpose of hindering and delaying
161 creditors of W. P. Holland or Florence T. Holland, but solely in the belief that the claims of interveners, and plaintiff in case 129, were illegal and void, against W. P. Holland and as against Florence T. Holland; and the total of all payments which may have been received on account of services rendered in said litigated cases was less than reasonably adequate compensation for the services so rendered.

XVI.

Further answering said petition said William E. Lamb says that during the performance of the aforesaid services the fact that said William E. Lamb and said firm of Butler, Lamb, Foster & Pope were employed to act and in good faith did and were in fact acting as attorneys for said Florence T. Holland in all said litigated cases and the magnitude of the time given by them to such services were fully known and understood by plaintiff and interveners herein and their counsel, but notwithstanding such knowledge no injunction pending the final disposition of the said cause 129 or any other cause was applied for or obtained preventing said Florence T. Holland from making payments to any person and no action was taken by plaintiffs or interveners to have placed in the custody of the Court by receivership or other appropriate measure the property of said Florence T. Holland

which was sought to be reached by plaintiff and interveners in cause 129 or in other suits pending the final disposition thereof; and plaintiff and interveners herein and their counsel are now estopped to object to any of said payments on account for services, or cash disbursements returned as aforesaid or to undertake to recover any proceeds derived by said William E. Lamb or said firm of Butler, Lamb, Foster & Pope from notes of said Florence T. Holland or moneys paid by her to said firm for services or any repayment of cash disbursements as aforesaid, in the manner and form hereinbefore set out.

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XVII.

Further answering said petition said William E. Lamb says that at all times when payments for services or cash disbursements as aforesaid were received by him or by said firm, said Florence T. Holland had in her own right a separate estate over and above any estate represented by or derived from transfers of cash or property, real or personal, of any kind or character, from said W. P. Holland to her; that said separate estate at the time of each and every payment received by said William E. Lamb or by said firm for services or cash disbursements as aforesaid was in excess of the amount so paid and that the total amounts received by said William E. Lamb and by said firm both as payments for services and as payments for cash disbursements as aforesaid were less than the total amount of said separate estate of said Florence T. Holland after making full allowance for expenditures, if any, therefrom, or depletion, if any, thereof.

XVIII.

Further answering said petition said William E. Lamb says that said petition was filed by and in the

name of plaintiff only and not in the name of or on behalf of any of the interveners; that the
163 total claim of plaintiff was for the sum of $36,032.78 with interest, and in the final decree entered in cause 129 the correct amount of plaintiff's claim was found to be $19,653.63; but no judgment was rendered in favor of said S. B. Cramer; that heretofore on or about the 1st day of May, 1930, the receiver appointed by this Court took into custody, pursuant to said final decree, property and money of a value greatly in excess of the amount of plaintiff's claim; that at all times when said William E. Lamb or said Butler, Lamb, Foster & Pope received any payments of moneys or notes for services or in reimbursement of cash disbursements as aforesaid, the estate remaining in the hands of Florence T. Holland was always greatly in excess of the amount of plaintiff's claim as aforesaid; and said estate was at all times greatly in excess of the amount of any and all claims asserted in said cause 1929 against said estate prior to April 17, 1930, by plaintiff and interveners (other than the United States of America whose intervention has heretofore been dismissed or withdrawn as aforesaid).

XIX.

Further answering said petition said William E. Lamb denies that said plaintiff or interveners herein or any of them are entitled to any of the relief prayed in said petition or to any relief of any kind or character whatsoever against him or against said firm of Butler, Lamb, Foster & Pope or any member thereof.

XX.

Answering said Citations served upon him on or about April 21, 1930, pursuant to said petition, said

William E. Lamb adopts for answer to said citation all of the foregoing answer to said petition
164 and without repetition makes the same answer to said Citation as hereinbefore set forth in answer to said petition.

Now, having fully answered both said Citation and said Petition, said William E. Lamb prays that he be held to have committed no contempt as in the petition alleged or as in the citation charged, and that he be fully and completely exonerated from all charges herefor, and fully and completely discharged from said citation, and that the same be discharged as against him; that the said petition be dismissed as against him, and that he be hence dismissed with his costs, etc.

WILLIAM E. LAMB.
W. C. WELLS,
Atty. for William E. Lamb.

State of Illinois,
County of Cook, ss.

William E. Lamb, being duly sworn, doth depose and say that he is the person named in the foregoing answer, that he has read the same and knows the contents thereof and that the same is true to his own knowledge, except such allegations as are therein stated to be on information and belief and those he believes to be true.

WILLIAM E. LAMB.

Subscribed and sworn to before me this the 16th day of May, 1930.

FRANCES C. ROBERTSON,
Notary Public.

My commission expires April 15th, 1934.

165 EXHIBIT A.

The Planters National Bank 85-120
Of Clarksdale.

No. 258012.
Clarksdale, Miss., Mar. 5, 1929.

Pay to the
Order of First National Bank, Chicago.....$3796.87

Planters National Bank $3796 & 87 Cts.....Dollars.
E. P. GRAVES,
Cashier.

To Continental and Commercial National Bank of Chicago, Ill.

Registered.
W. L. KING.

Stamped:
Paid through Chicago Clearing House, Mar. 8, 1929.
To the First National Bank, Chicago, Ill.

166 EXHIBIT B.

The Planters National Bank 85-120
Of Clarksdale.

No. 258377.
Clarksdale, Miss., June 6, 1929.

Pay to the
Order of First National Bank of Chicago...$11531.25

Planters National Bank $11531 & 25 Cts.....Dollars.

To Continental and Commercial National Bank of Chicago, Ill.

W. D. SESSIONS.

Registered.
E. P. GRAVES,
Teller.

(Stamped):
I. Paid through Chicago Clearing House, June 8, 1928. B.
To The First National Bank.
Pay to the order of any Bank or Banks.
Prior indorsements guaranteed.
First National Bank of Chicago, Ill.

167 EXHIBIT C.

The Planters National Bank 85-120
Of Clarksdale.

No. 258471.
Clarksdale, Miss., Dec. 14, 1929.

Pay to the
Order of First National Bank of Chicago...$12833.33

Planters National Bank $12833 & 33 Cts....Dollars.

To Continental and Commercial National Bank of Chicago, Ill.

N. B. SESSIONS,
Cashier.

Registered.
R. N. BALTZER,
Teller.

(Stamped):
Paid through Chicago Clearing House.
I.
Dec. 16, 1929.
To the First National Bank.
Pay to the order of any bank or banker.
Prior indorsements guaranteed.
21 First National Bank of Chicago, Ill. "1.

168 EXHIBIT D.

The Planters National Bank 85-120
Of Clarksdale.

No. 258472.

Clarksdale, Miss., Dec. 14, 1929.

Pay to the
Order of First National Bank of Chicago..$12833.33

Planters National Bank $12833 & 33 Cts.....Dollars.

To Continental and Commercial National Bank of Chicago, Ill.

W. D. SESSIONS,
Cashier.

Registered.
R. N. BALTZER,
Teller.

(Stamped):
Paid through Chicago Clearing House.
I.
Dec. 16, 1929.
To the First National Bank.
Pay to the order of any bank or banker.
Prior indorsements guaranteed.
21. First National Bank of Chicago, 2-1.

169 EXHIBIT E.

The Planters National Bank 85-120
Of Clarksdale.

No. 1638.

Clarksdale, Miss., Dec. 18, 1929.

Pay to the
Order of Butler, Lamb, Foster and Pope, Attys.
$10,000.00

Planters National Bank $10000 & 00 Cts....Dollars.

To Guaranty Trust Company of New York, New York.

N. D. SESSIONS.

Registered.

R. N. BALTZER,
Teller.

(Stamped):
Pay to the order of any bank or banker or Trust Co.
All prior indorsements guaranteed.
Oct. 21, 1929.
First National Bank, Chicago, Ill. R. E. Newhall, Cashier.
Indorsed:
Pay The First National Bank of Chicago, Ill., or order.

BUTLER, LAMB, FOSTER & POPE.

No. 4326.

Filed May 19, 1930.

170 AFFIDAVIT OF SAM C. COOK IN OPPOSITION TO MOTION OF DEFENDANT TO QUASH SERVICE OF PROCESS.

In the District Court of the United States for the Delta Division of the Northern District of Mississippi.

William A. Schmitt, Receiver, Plaintiff,
vs. No. 162 in Equity.
William E. Lamb, Defendant.

State of Mississippi,
County of Coahoma,
City of Clarksdale.

This day personally appeared before me, the undersigned Notary Public in and for said City, Coun-

ty and State, Sam C. Cook, who, being by me first duly sworn, stated on oath the facts following, to-wit:

Affiant is an attorney at law, engaged in the practice of his profession at Clarksdale, Coahoma County, Mississippi, and has been so engaged for more than five years last past. Affiant is one of the attorneys for the plaintiff and interveners in Cause No. 129, styled B. B. Cramer, et al., vs. Florence T. Holland, et al., now pending upon the equity docket of the above entitled Court.

Immediately after the rendition of the oral opinion rendered by the Court on the final hearing of said cause No. 129 on the afternoon of April 21st, 1930,
171 a conference was requested of affiant and his associates by J. W. Cutrer, one of the attorneys for the defendant Florence T. Holland, and it was stated by said J. W. Cutrer that said conference was called for the purpose of negotiating a settlement. On both the afternoon and evening of April 21st, 1930, continuous conferences were had between the attorneys representing opposing interests in said litigation, looking to the settlement of the same, except that William E. Lamb was not present at any of said conferences. On the evening of April 21st, 1930, in addition to the Attorneys interested in said cause, with the exception of said William E. Lamb, there were present W. P. Holland, husband and general attorney for Florence T. Holland, E. L. Anderson, a business associate of said W. P. Holland of many years standing, C. G. Smith a personal friend and business associate of W. P. Holland and Florence T. Holland, and other friends of the said W. P. Holland and Florence T. Holland. The conference on the evening of April 21st, 1930, lasted until about 1:30 o'clock in the morning of the following day. Active negotiations were carried on between all of the parties present. Said William E. Lamb was not pres-

ent at any of said conferences, and, so far as affiant had knowledge, he did not participate therein in any way.

On April 22nd, 1930, immediately after the adjournment of Court at about 10:30 o'clock A. M., negotiations were resumed between affiant and his associates on the one part, and attorneys representing opposing interests (with the exception of William E. Lamb) on the other part, and these negotiations continued through April 24th, when finally a tentative agreement was reached between counsel representing the plaintiff and interveners and counsel representing Mrs. Holland (with the exception of William E. Lamb), which was subject to the approval and ratification of S. B. Cramer, R. G. Emerson, and R. N. Sims. William E. Lamb did not participate in any conference leading up to such tentative agreement. This tentative agreement was submitted to the said S. B. Cramer in Memphis, Tennessee, on or about April 26th, 1930, and he advised Gerald Fitzgerald, one of the attorneys associated with affiant, that the agreement was not satisfactory to him. Mr. Fitzgerald, who had gone to Memphis for the purpose of meeting Mr. Cramer and submitting to him the tentative agreement returned to Clarksdale, on April 28th, 1930, and was met in his office by affiant about 9 o'clock A. M. on that day. Affiant was informed at that time by Mr. Fitzgerald of the result of the conference with Mr. Cramer.

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At about 10 o'clock A. M., on April 28th, 1930, affiant notified J. W. Cutrer, one of the attorneys then representing the defendant, Mrs. Holland, that the matter of the entry of final decree in said cause No. 129 would be presented to the Judge of this Court presiding in said cause on April 30th, 1930, at 10 o'clock A. M. About 11 o'clock A. M., on the same day, affiant was advised by said Cutrer that the said time and place were agreeable to himself, his asso-

ciates, and his clients. On the afternoon of April 28th, 1930, about 2 o'clock P. M., William E. Lamb called affiant on the telephone and stated to affiant
173 that he had been informed that the matter of the entry of a final decree would be presented to said Court at said time, on April 30th, 1930, and reminded affiant that the matter of the citation for contempt had also been set by said Court at the time of the presentation of the matter of the entry of a final decree. Said William E. Lamb stated to affiant that there were some pressing matters of business, personal to himself, which required his presence in either Chicago or Washington, D. C., for a period of not less than ten days or two weeks after April 30th, 1930, and requested affiant to agree, on behalf of the clients whom affiant represented, to continue, from April 30th, 1930, to some other date, the matter of the hearing of the said citation for contempt. Affiant, on behalf of his clients immediately agreed to such continuance, and stated that his clients would agree to any date in the future that was satisfactory to said William E. Lamb and the Judge of the Court. Said matter of the citation for said contempt thereupon (as affiant understood) stood continued from April 30th, 1930, to some uncertain date in the future.

Affiant was present in Yazoo City, Mississippi, on April 30th, 1930, and actively participated in the negotiations leading up to the entry of the final decree in the form in which it was entered. Numerous conferences were had between attorneys representing the
174 opposing parties on said date prior to the final agreement. Said William E. Lamb attended none of the conferences between attorneys representing both sides. Affiant had occasion to observe and did observe that said William E. Lamb did not attend conferences between Florence T. Holland, W. P. Holland, J. W. Cutrer, W. H. Powell, and

G. Ed. Williams on said date. The terms of said decree were substantially agreed upon, and it became necessary to dictate the decree to a stenographer, and said decree was dictated to a stenographer in the presence of all the attorneys in the cause with the exception of William E. Lamb. When the decree had been dictated and transcribed, it was read aloud at another conference attended by all attorneys except William E. Lamb. Thereupon, said decree was approved by written indorsement entered thereon by said Florence T. Holland, and all the attorneys then appearing in said cause for the plaintiff and interveners, and all the attorneys for said Florence T. Holland, except William E. Lamb. Affiant presented the said decree to the said William E. Lamb, and asked him, the said William E. Lamb, to indorse his approval thereon, and thereupon the said William E. Lamb stated to affiant that he was out of the case, and had nothing to do with the case at that time; that his services had been dispensed with.

The decree, when it had been indorsed by all said parties except William E. Lamb, was thereupon presented to the presiding Judge, who, after some preliminary questions, inquired if it was or was not a consent decree, and, upon being informed
175 that it was, said presiding Judge immediately signed said decree. Thereupon said presiding Judge inquired of the attorneys present the status of said citation for contempt as against said William E. Lamb. He was immediately informed, either by affiant or some other attorney present, that the matter had been continued by consent to such time as would be satisfactory to the Court and Mr. Lamb. After some discussion, June 9th, at Biloxi, Mississippi, was set by the Court, to which date all parties present acceded.

When affiant presented the said final decree for the approval of the said Lamb, he was requested by said

Lamb to insert in said decree a provision that same should be without prejudice to him or Butler, Lamb, Foster & Pope, stating that the decree, as originally drawn, contained such an exception as to the Planters Manufacturing Company, and further stating that he thought that we should extend to him the same courtesy. This was agreed to (subject to the approval of his associates) by affiant, and the said provision was inserted in said decree, on the request of the said Lamb, by consent of all attorneys there present representing the plaintiff and interveners.

Affiant further states that there are three trains leaving Clarksdale regularly on every day through to Chicago; one leaving about 5 o'clock A. M., another about 1:30 P. M., and the third about 5 P. M.; that these trains were operating during all of the month of April, 1930. The train leaving about 5 P. M. carried, at said time, a through sleeper from
176 Clarksdale to Chicago, and one leaving Clarksdale on either of the other two trains is required to change trains at Memphis, Tennessee, after a lay-over of some 30 or 40 minutes.

SAM C. COOK.

Sworn to and subscribed before me this 11th day of September, 1930.

LOUISE ARRINGTON,
Notary Public.

(Stamped): Filed Sept. 11, 1930.

177 (AFFIDAVIT OF JOSEPH F. ELLIS.)

State of Mississippi:
County of Coahoma.

This day personally appeared before me, the undersigned, a Notary Public in and for said County

and State, Jos. E. Ellis, being by me duly sworn, deposed and said:

That the amounts set forth below on the dates stated below, represent amounts of money paid by W. P. Holland or Florence T. Holland to William E. Lamb and/or the firm of Butler, Lamb, Foster & Pope and/or their employees on the dates stated:

	Aug. 8, 1928	$10,000.00
	Sep. 8, 1928	550.68
	Oct. 8, 1928	20.78
	Dec. 14, 1928	146.55
	Dec. 7, 1928	250.00
	Mch. 5, 1929	3,750.00
	June 1, 1929	11,250.00
	Oct. 1, 1929	10,000.00
	Nov. 25, 1929	250.00
	Dec. 13, 1929	25,000.00
	Apr. 19, 1930	250.00
	Dec. 30, 1929	666.66
	June 1, 1929	281.25
	Mch. 5, 1929	46.87
	May 11, 1929	68.70
	May 24, 1929	68.70
	Jun. 10, 1929	22.35
	Sep. 3, 1929	29.10
	Sep. 3, 1929	10.73
178	Oct. 14, 1929	68.70
	Oct. 26, 1929	36.35
	Nov. 8, 1929	68.70
	Nov. 8, 1929	258.36
	Oct. 21, 1929	50.00
	Nov. 5, 1929	25.00
	Nov. 22, 1929	100.00
	Nov. 25, 1929	72.70
	Dec. 6, 1929	100.00
	Dec. 13, 1929	65.00

Dec.	20, 1929.....	27.85
Feb.	3, 1930.....	3,865.93
Feb.	6, 1930.....	29.10
Feb.	18, 1930.....	100.00
Mch.	10, 1930.....	310.10
Apr.	9, 1930.....	711.17
Apr.	12, 1930.....	1,760.33
	Total	$70,380.36

That he is an accountant and has examined the books of W. P. Holland and Florence T. Holland; that the said amounts appear on the books of W. P. Holland and/or Florence T. Holland as being amounts paid for legal services rendered or to be rendered or expenses incurred in connection with the performance of such services; that a number of said items have been paid through the intermediate issuance of notes, which said notes were later paid in cash;
179 that the money to pay all of said amounts was withdrawn from the banks accounts of Florence T. Holland; that while said books indicate that the amounts were paid for attorney's fees, the books do not identify any particular payment for services rendered or to be rendered with any particular service or undertaking and said books do not indicate whether said amounts were paid for the services previously rendered or as an advance for services to be rendered.

JOS. F. ELLIS.

Sworn to and subscribed before me this the 10th day of September, 1930.

LOUISE ARRINGTON,
N. P.

(Stamped): Filed Sept. 11, 1930.

180 (TESTIMONY OF GERALD FITZGERALD FILED IN CAUSE No. 129 EQUITY.)

In the District Court of the United States for the Delta Division of the Northern District of Mississippi.

William S. Schmitt, Receiver, Plaintiff,
vs. No. 167, Equity.
Wm. E. Lamb, Defendant.

Be it remembered, that heretofore, to-wit, on July 25, A. D. 1930. the above styled and numbered cause came on for hearing in vacation before the Honorable Edwin R. Holmes in chambers at Yazoo City, Mississippi, whereupon the following testimony of Honorable Gerald Fitzgerald, of Clarksdale, Mississippi, one of the Attorneys for the Plaintiff, was taken and entered of record, to-wit:

Appearances:
For the Plaintiff:
Hon. Gerald Fitzgerald, of Clarksdale, Mississippi.

For the Defendant:
Hon. W. Calvin Wells, of Jackson, Mississippi.
Hon. Hubert Lipscomb, of Jackson, Mississippi.
Hon. A. B. Tanner, of Chicago, Illinois.

GERALD FITZGERALD, being first duly sworn, testified as follows:

181 Judge William E. Lamb, the defendant in this case—William A. Schmitt, Receiver, against William E. Lamb—is well known to me, he

having been admitted to practice law in this Court, the District Court of the United States for the Delta Division of the Northern District of Mississippi, on the introduction of Mr. Sam C. Cook, in my presence, approximately sixteen or seventeen months ago.

Judge Lamb has been—to my certain knowledge, he has been constantly in Clarksdale, Mississippi, for the past seventeen months, having only gone to Chicago during that time to visit his family, as he told me personally, two times during the seventeen months.

By the Court:

You mean immediately preceding the service of process on him—seventeen months immediately preceding the service of process on him in the bill filed on April 30, 1930.

By Mr. Fitzgerald:

He told me eighteen months, but I said seventeen because I don't remember the exact date. His entire time has been taken up by this particular case, as he told me personally that he was going to quit the practice of law at the close of this case, and that he was giving his entire time and attention to this case. It was the last case he intended to try. Upon the filing of the original petition, styled S. B. Cramer, et al., vs. Florence T. Holland, No. 129, in Equity, upon which citation was issued, Judge Lamb re-
182 quested me, as counsel in that case, to hold up the hearing of that case, or any reply until after the final decree in the case. I don't remember the date of the service upon Judge Lamb of the process in that particular matter, but the decree was rendered in Yazoo City, Mississippi, April 30, 1930, as I recall it.

At that time, on April 30, I agreed with Judge Lamb and the Court that the hearing on that particular citation should be held in Biloxi, Mississippi, on

June 9th, 1930. Judge Lamb then was staying at Clarksdale, Mississippi, in the home of Mr. W. P. Holland and Mrs. Florence T. Holland, the latter, defendant in Cause No. 129. I do not know when Judge Lamb left, nor did I know when he was going to leave when the petition in 163 was filed.

I understood, of course, that Judge Lamb had never changed his citizenship from Chicago to Clarksdale. Besides cause No. 129 there were several other collateral suits between the several parties all pending in the United States District Court, and in all of which Judge Lamb was actively interested, and all of which involved the same property and practically the same parties.

By Hon. W. C. Wells:

We move to exclude all the testimony of Mr. Fitzgerald, as being incompetent, irrelevant and immaterial, with the exception of the testimony to the effect that Mr. Lamb was admitted to practice in the District Court of the United States for the Northern District of Mississippi.

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By the Court:

Overrule the motion.

By Mr. Wells:

Please note that an exception was taken in open Court.

By Hon. A. B. Tanner:

I would like to ask Mr. Fitzgerald a couple of questions, that is, without prejudice to our right to file a counter affidavit of have further hearing on this particular motion. I don't want to waive this objection we have now made or to waive any right to file further affidavits, nor do I want the Court—

By the Court:

I thought we were going to close this testimony today. That is what you objected to, his filing affidavits.

By Mr. Tanner:

If there is any dispute about the facts I don't want Mr. Lamb to be foreclosed in any way. I certainly want to have Mr. Lamb faced with the fact that he was here seventeen months. My impression is he had not been here that long.

By Mr. Fitzgerald:

How long did you think he had been here?

By Mr. Tanner:

He asked me in the Fall of 1929 if I would have time to help in this case, and he said he would be here to try the case for a long time. I didn't
184 know he was down here before that. That is as far back as my knowledge goes in the matter.

By Mr. Fitzgerald:

He was employed in August, 1928.

By Mr. Tanner:

That was an entirely different matter.

By Mr. Fitzgerald:

That is when he first got into it.

Examination of Hon. Gerald Fitzgerald by Hon. A. B. Tanner.

Q. Mr. Fitzgerald, you were the attorney for the plaintiffs in the case in equity, Sterling B. Cramer vs. Florence T. Holland, No. 129?

A. Yes.

Q. You were counsel in all of this pleadings, and are still counsel?

A. Yes.

Q. You are also counsel for the Receiver, Schmitt, against William E. Lamb, entitled No. 162—you are also counsel in that case?

A. Yes.

Q. That was the case that the receiver was appointed as the result of the proceedings in No. 129 in Equity. That correct?

A. Yes.

Q. Am I to understand in your testimony to mean you claim Mr. Lamb was here in any other capacity than attorney or respondent in the contempt proceedings?

A. No.

185 Q. That is all you claim?

A. Yes.

Q. You don't contend that he was—he had moved here or was living here, or was here for any other trial or business other than this case?

A. None at all.

By Mr. Wells:

Q. On April 30, 1930, you admit then that Mr. Lamb was a citizen of Chicago, Illinois, and was here on that date, April 30, 1930, acting in the capacity of counsel for the Hollands, Mr. and Mrs. Holland, on that date?

A. That is exactly what he was doing.

Q. And he was also at that time in the Northern District of Mississippi under citation for contempt, which had been set for hearing on that same date, April 30, in Yazoo City?

A. No, I don't admit that. I said before that Judge Lamb came to me and told me to hold the matter up, and we said we would hold the matter up as long as he wanted to hold up; that after we came

to Yazoo City, in the presence of the Judge, we agreed that it would come up in Biloxi on the 9th day of June. That is my recollection.

Q. Was there any other notice in cause No. 129, setting this citation for hearing at the same time that the final decree was to be entered in No. 129?

A. If there was I didn't know it. I
186 don't remember if there was, but I know this much, that Judge Lamb and I agreed that we would not answer the petition; it would not be taken up at that time, until it would be agreeable.

Q. Wasn't that contempt set for hearing on such date as the final decree was entered?

A. If it was I don't remember it that way.

Q. Was the matter not called up in accordance with your agreement when the final decree was entered on April 30, and set for June 9th?

A. We just agreed to set it on a date when it would be agreeable to all parties. In other words, Mr. Wells, I don't recall that it was particularly set here for the 30th. We just carried it over because the citations had been served prior to any decree. No decree had ever been entered at that time.

By Mr. Wells:

Q. Does Your Honor have any recollection of that being adjourned until the final decree was entered in this main case in 1929?

By the Court:

What is the purpose of the question?

By Mr. Wells:

I just wanted to make a record with reference to that fact, to see if it is necessary to take an affidavit from Mr. Lamb.

187 By the Court:

I don't care to be put on the stand. I don't think it is proper at all. You have one witness on the stand.

By Mr. Fitzgerald:

I want to say this: If Judge Lamb says that we had an agreement that this matter was to come up to be heard on the 30th day of April, then I will say that probably that is true. I have no recollection of any agreement that was made with him. My recollection is that Judge Lamb might answer it at such time as was convenient to the parties.

By Mr. Tanner:

Q. On the 30th of April that contempt citation, and the petition, and the citation issued on it was still pending and undisposed of before the Court?

A. Yes.

Q. That citation is also still pending and undisposed of before the Court?

A. That is my understanding, certainly.

Q. And the citation was pending on the 30th of April when Mr. Lamb appeared at Yazoo City?

A. Yes.

Q. And has not been disposed of?

A. No, neither has the other matter. It is my understanding that it was simply left open, to be answered on the date that would be agreeable to the parties.

188 STENOGRAPHER'S CERTIFICATE.

I, W. G. Montgomery, Stenographer, hereby certify that I stenographically reported the proceedings on motion to quash service in the matter of Schmitt, Receiver, vs. William E. Lamb, tried at Yazoo City,

Mississippi, on the 25th day of July, A. D. 1930, and that the foregoing eight sheets constitute a true and correct transcript of my notes taken at said trial.

This 26th day of July, A. D. 1930.
W. G. MONTGOMERY.

Filed Sept. 4, 1930.

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189 (DECREE QUASHING PROCESS, No. 162, EQUITY.)

(Title Omitted.)

Final Decree.

This day came on to be heard the above styled cause at Chambers, in vacation, by consent of all parties hereto, upon the motion of the defendant that the process heretofore attempted to be served upon William E. Lamb in this cause should be quashed, and upon the evidence, documentary and oral, taken at the time of the hearing of said motion in open Court, and the said matters having been argued before the Court by counsel for both plaintiff and defendant, both orally and in written briefs, and the Court having duly considered the same and being fully informed in the premises is of the opinion that the said process should be quashed for the reasons set forth in the motion of the said defendant.

It is, therefore, considered by the Court, and ordered, adjudged and decreed that the said motion of the said defendant, William E. Lamb, that the process served upon him heretofore in this cause, should be quashed, be, and the same is hereby, sustained and

the said service of process is hereby quashed,
190 declared null and void, and hereafter to be held for naught.

The plaintiff, William A. Schmitt, Receiver, by his attorneys, excepts to the entire foregoing decree in open Court, and his exceptions is allowed. The plaintiff having prayed an appeal to the Circuit Court of Appeals, the same was granted in open Court when the plaintiff entering into bond in the sum of $500.00 conditioned according to law.

Ordered, adjudged and decreed this the 9th day of October, A. D. 1930.

E. R. HOLMES,
District Judge.

Filed Oct. 9, 1930, O. B. 2, pages 248-249.

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191 (OPINION OF JUDGE HOLME'S.)

(Title Omitted.)

Maynard, Fitzgerald & Venable of Clarksdale, Miss,. Green & Green, of Jackson, Miss., Attorneys for Plaintiff.

Wells, Jones, Wells, & Liscomb, of Jackson, Miss., Butler, Lamb, Foster & Pope, of Chicago, Ill., Attorneys for Defendant.

The Plaintiff, William A. Schmitt, was appointed Receiver by this Court under a final decree rendered in a suit by Sterling B. Cramer and other judgment creditors of W. P. Holland to set aside certain fraudulent conveyances made by him to his wife, Florence

T. Holland, and to subject the property so conveyed to the payment of the Judgment. No Receiver had been appointed during the pendency of the suit.

William E. Lamb, a citizen of Illinois, is an attorney at law residing in Chicago, and represented Mrs. Holland in the above suit, coming to Mississippi for that purpose and devoting himself exclusively to his duties as attorney in the preparation of her defense and in appearance in Court.

During the trial of the case and near its end, on petition of the plaintiffs, Mr. Lamb was cited to show cause why he should not be punished for contempt of Court in receiving various sums of money aggregating over $70,000.00, which it is claimed, were paid to him by Mrs. Holland, in the guise of legal fees, but which, in fact belonged to the judgment debtor.

192 While the contempt proceeding was still pending, and on the same day that a final decree was entered in the original suit, this ancillary proceeding was filed by the receiver against the attorney to recover the above sums paid to him by Mrs. Holland, which it is claimed, were trust funds in her hands and remained such in the hands of Lamb who had received them with full knowledge of the facts.

The defendant moves to quash the process and dismiss the ancillary proceeding against him on the ground that he was exempt from service of civil process upon him in this state, because at the time he was present (1) as attorney for Mr. Holland, and (2) in response to the citation for contempt.

It is contended by the plaintiff that at the time process was served upon the defendant his presence in the state was not rendered necessary either by his duties as attorney or to respond to the citation for contempt.

I think this is too narrow a view to take of the attorney's attitude. After the citation for contempt was issued, while commendably holding himself aloof from the main case, he remained Mrs. Holland's attorney and doubtless intended to resume actively his duties as such, if the contempt proceedings should be disposed of, and he might do so without embarrassment, before the final decree was entered. But while continuing this attitude, the final decree was entered, and on the same day this suit was filed and process served upon the defendant, while he was preparing to take a train for his home in Chicago.

It is also true that a continuance had been agreed upon for the contempt hearing but the order was not made by the Court until the very day process herein was served. Under these circumstances Mr. Lamb had the right to remain in the state until agreement was formally approved by the Court and the order duly entred.

Accordingly, I see no reason to doubt that at the time process was served upon the defendant in this proceeding he was a non-resident attorney, in the state solely for the purpose of representing a litigent in this Court, and while actually so en-
193 gaged was cited for contempt of Court at the instance of the plaintiffs in the suit in which he was appearing.

There is no allegation of any misconduct in this state by the defendant and no fact averred to overcome the inference that the alleged fees were received by him before he came here.

The motion to quash should be sustained because the defendant was exempt from the service of civil process upon him while in attendance upon Court and during a reasonable time in coming and going. Stwart v. Ramsey 242 U. S. 128; Page Co. v. McDonald 261, U. S. 466; Central Trust Co. v. Milwaukee Street R. R. Co., 74 Fed 422 Reed v. Noff, et al.,

207 Fed. 890 Higgins v. California Prune Company, 282 Fed. 550; Kinne v. Lant, 68 Fed. 436; Hale v. Wharton 73, Fed. 739.

Conceding the general rule, the receiver urges the Court to make an exception to it because of the auxiliary character of this proceeding. He says it was instituted by him in furtherance of the original object of the creditors' bill and justifies a departure from the ordinary rules of process as well as of jurisdiction. No cases are cited specifically supporting this contention, and the logic of the authorities cited to the contrary is to the effect that for purposes of federal jurisdiction this case is ancillary, but in other respects it is an independent suit. Bowen, Receiver v. Christian, 16, Fed. 729; Shainwald v. Davis, 69 Fed. 701; Richardson v. Loree (5th Circuit) 94 Fed. 575.

In Pac. R. Co. of Mo. v. Mo. Pac Ry. Co. 111 U. S 522, the Supreme Court said:

"On the question of jurisdiction the suit may be regarded as ancillary * * * so that the relief asked may be granted by the Court which made the decree * * * withont regard to the citizenship of the present parties, though partaking so far of the nature of an original suit as to be subject to the rules in regard to the service of process which are laid down by Mr. Justice Miller in Pacific Railroad v. Missouri Pacific Railway Co., 1 McCrary 647. The bill, though an original bill in the chancery sense of the word, is a continuation of the former suit on the ques-
194 tion of the jurisdiction of the Circuit Court. Minnesota Co. v. St. Paul Co., 2 Wall. 609, 633."

The rule laid down by Mr. Justice Miller in 3rd Fed. 772, was upon the issue of validity of service of process without the district. The Court said:

"the argument, by which it is endeavored to support the service of process upon persons without the district, is that the present suit is one that is auxiliary to the former suit in which the decree of foreclosure was had; that it is so far merely a continuation of that suit; and that it is not a new and original suit * * *. It may be conceded for the purpose of this motion that it is to a certain extent auxiliary to the original foreclosure suit * * *. But it also partakes so far of nature of an original suit that the parties who are here contesting service of this process cannot be brought before the Court by anything short of a subpoena in chancery and cannot be compelled to answer and respond to the allegations of the present bill in any other mode than in the mode usually adopted in original chancery bills".

In considering the exact question for determination, on the motion to quash the process, in the case at bar, it is necessary to distinquish between the Court's having jurisdiction of the subject matter and bringing in new parties. In the latter case service of process in ancillary proceedings is governed by the same rules as obtained in the case of an original suit.

An order may be entered accordingly.

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195 APPEAL BOND.

(Title Omitted.)

Know all men by these presents, that we, William A Schmitt, Receiver, principal and the Fidelity and Casualty Company of New York, seureties, are held and firmly bound unto William E. Lamb, defendant,

in the full sum of Five Hundred Dollars ($500.00), the payment of which well and truly to be made we bind ourselves, our heirs, executors, assigns, administrators, and successors forever.

The condition of the foregoing bond is such that whereas, on the 9th day of October, 1930, a decree was entered in the above styled cause as against the appellant; and the appellant, feeling aggrieved thereat, has prayed an appeal to the Circuit Court of Appeals of the United States, which same was granted in open Court upon the condition that the appellant enter into bond in the sum of Five Hundred Dollars ($500.00) to pay all costs and damages, if any, which may be charged against him.

Now, therefore, if the said principal shall
196 well and truly prosecute his appeal to the Circuit Court of Appeals with effect, and shall pay all costs and damages which may be assessed against him, then this obligation to be void; otherwise, to remain in full force and effect.

Witness the hand of the principal and sureties on this, the 7th day of October, 1930.

WILLIAM A. SCHMITT,
Principal,

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK,
J. H. JOHNSON,
Sureties.

Affirmed this Oct. 9th, 1930.
E. R. HOLMES, Judge.

Filed Oct. 10, 1930.

197 ASSIGNMENT OF ERRORS.

(Title Omitted.)

And now, on this, the 9th day of October, 1930, came the receiver and says that the decree entered in the above styled cause on this day is erroneous and unjust to the plaintiff, because:

I.

The original bill in this cause and the evidence introduced on the motion to quash the service shows that William E. Lamb, while acting as an attorney and officer of this Court in cause No. 129, wrongfully and unlawfuly and illegally diverted funds then in the hands of the Court and the subject of the litigation in cause No. 129, and, therefore is not entitled to the exemption from service as a non-resident attorney.

II.

It appears from the original bill in this cause and all the evidence submitted to the Court that this cause is an ancillary proceeding to cause No. 129, in that it involves the property in litigation in cause No. 129, which at the time of the alleged
198 diversion of said funds were in the hands of the Court in cause No. 129; and, therefore, under the statutes and laws applicable the District Court of the United States for the Delta Division of the Northern District of Mississippi had jurisdiction over litigation in reference to said property.

III.

It appears from the original bill and all the evidence herein submitted to the Court that the entire record in cause No. 129 is made a part of this cause No. 162 by reference, and that there is stated in substances in the original bill in No. 162, there being reference to the original bill in No. 129, that by virtue

of the filing of the bill in 129, the District Court of the United States for the Delta Division of the Northern District of Mississippi obtained exclusive jurisdiction over the entire estate of Florence T. Holland, and especially over the monies at that time in the hands of the said Florence T. Holland.

It further appears that after the filing of the said bill, and with full knowledge that this Court had taken exclusive jurisdiction of the said monies and properties, the said William E. Lamb, defendant in cause No. 162, diverted from the funds then in the actual and/or constructive possession of the Court approximately Ninety Thousand Dollars ($90,000.00), which diversion it is alleged was, and is wrong-
199 ful and illegal; that the said William E. Lamb at the time of the said diversion, between the dates of August 8, 1928, and April 12, 1930, was an attorney at law and practicing in the said District Court and had full knowledge of the jurisdiction of this Court and of the matters and things alleged.

Therefore, the said William E. Lamb is estopped to set up and claim exemption from the service of process in this cause issued on the grounds that he, the said William E. Lamb was a non-resident attorney attending Court in this jurisdiction.

IV.

As shown by the original bill and evidence herein submitted to the Court, this cause involves the money and property jurisdiction of which was taken by said Court in cause No. 129 upon the filing of the original bill therein; and no act of any party with knowledge, be he resident or non-resident attorney, could divest the Court of that jurisdiction and compel the parties in interest and/or the Court to seek the jurisdiction of another Court to decide the question as to whether or not the defendant, Lamb, has illegally

and wrongfully diverted the funds then in the jurisdiction of this Court.

The Court erred in entering the order sustaining the motion to quash the process upon the defendant.

200 VI.

The Court erred in holding in effect that the misconduct of the defendant Lamb was not committed in this State because the uncontradicted proof before the Court on the motion to quash shows that the moneys sought to be recovered from the defendant were received by him within the State of Mississippi during the pendency of Cause No. 129.

VII.

And for other causes to be assigned at the hearing hereof.

Respectfully submitted,
MAYNARD, FITZGERALD & VENABLE,
ROBERSON & COOK,
GREEN & GREEN & POTTER.

I the undersigned, one of the attorneys for the appellant in the above entitled cause, do hereby certify that I have this day delivered in person to Wells, Jones, Wells & Lipscomb, attorneys for the defendant, a true copy of the foregoing assignment of errors.

This October 9th, 1930.

GERALD FITZGERALD,
One of the Attorneys for Appellant,
MAYNARD, FITZGERALD & VENABLE,
ROBERSON & COOK.

201 PRAECIPE TO THE CLERK OF THE DISTRICT COURT AFORESAID TO MAKE UP THE RECORD FOR APPEAL IN THE MATTER OF THE QUASHING OF PROCESS IN SAID CAUSE.

(Title Omitted.)

To the District Clerk of The Court aforesaid:

You are hereby requested to make up the record in the above styled cause and matters on appeal and to include within the record the following:

(a) Original bill in said cause, No. 162.

(b) Original bill in cause No. 129.

(c) Supplemental bill in cause No. 129.

(d) Final decree in cause No. 129 dated April 30, 1930.

(e) Process issued herein in cause No. 162.

(f) Motion to quash process herein.

(g) Affidavit of William E. Lamb in support of motion to quash process.

(g-1) Motion to reopen evidence & order thereon.

(h) Affidavit and pleading of William E. Lamb filed in cause No. 129 in answer to citation
202 for contempt as against him in cause No. 129, and introduced herein as evidence on this motion to quash.

(i) Affidavit of Sam C. Cook.

(j) Affidavit of Joseph F. Ellis.

(J-1) Testimony of Gerald Fitzgerald introduced on trial of the motion to quash.

(l) Decree quashing process.

(m) Appeal Bond.

(n) Assignment of errors.

(o) This praecipe.

Yours truly,
MAYNARD, FITZGERALD & VENABLE.

We, Maynard, Fitzgerald & Venable, hereby certify that we have this day handed to Messrs. Wells, Jones, Wells, & Lipscomb a true copy of the foregoing praecipe.

GERALD FITZGERALD.

Filed Oct. 10, 1930.

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203 (PRAECIPE OF APPELLEE).

In the District Court of the United States for the Delta Division of the Northern District of Mississippi.

William A. Schmitt, Receiver, Plaintiff,
v. No. 162 in Equity.
William E. Lamb, Defendant.

Praecipe of Appellee for Additional Portions of the Record to be incorporated into the Transcript on Appeal filed in behalf of Plaintiff.

To the District Clerk of the Court Aforesaid:

You are hereby requested on behalf of the appellee in making up the record in the above styled cause to include within the record the following, to-wit:

(a) Opinion of District Judge Edwin R. Holmes, sustaining the motion to quash the process on defendant in this cause, rendered on or about October 9, 1930.

(b) Copy of this Praecipe.

WELLS, JONES, WELLS, & LIPSCOMB,
Attorneys for Defendant—Appellee.

We, Wells, Jones, Wells & Lipscomb, attorneys for Appellee—Defendant, William E. Lamb, hereby certify that we have on this the 9th day of October, 1930, handed to Messrs. Maynard, Fitzgerald & Venable, attorneys for Plaintiff—Appellant, a true copy of the foregoing praecipe having delivered same on the same day on which the copy of the praecipe on behalf of plaintiff—Appellant was delivered to the undersigned attorneys for defendant—Appellee.

WELLS, JONES, WELLS, & LIPSCOMB,
Attorneys for Defendant—Appellee.

204 Filed Oct. 10, 1930.

205 CLERK'S CERTIFICATE.

I, B. G. LOWREY, Clerk of the United States District Court for the Northern District of Mississippi, Delta Division, do hereby certify that the foregoing two hundred and four (204) pages are true and correct copies of all documents, orders, and other papers pertaining to Cause No. 162 in Equity, wherein William A. Schmitt, Receiver, is the appellant and William E. Lamb the appellee, as shown by the record of this Court and now on file in the office of the Clerk at Clarksdale, Mississippi.

Witness my hand and seal of office this the 29th day of October 1930.

B. G. LOWREY, Clerk,
By CELIA COOK DAVIS,
(Seal) Deputy Clerk.

Minute entry of argument and submission, January 13, 1931, omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 6072

WILLIAM A. SCHMITT, Receiver, Appellant,

vs.

WILLIAM E. LAMB, Appellee

Appeal from the District Court of the United States for the Delta Division of the Northern District of Mississippi

Gerald Fitzgerald, Marcellus Green, Garner W. Green, J. L. Roberson, Sam C. Cook (Maynard, Fitzgerald & Venable, on the Brief) for Appellant.

W. Calvin Wells, Arvid B. Tanner (Wells, Jones, Wells & Lipscomb, on the Brief) for Appellee.

Before Foster, Circuit Judge, Grubb, and Dawkins, District Judges

OPINION OF THE COURT—Filed April 9, 1931

DAWKINS, District Judge:

In this case the plaintiff alleged that he had been appointed receiver of certain property and funds found by final decree of the court below in suit in equity No. 129, to be impressed with a trust and lien in favor of creditors of W. P. Holland, husband of the defendant therein, Florence T. Holland; that the said original proceeding had been one in which the plaintiff, for himself and for the use and benefit of other creditors of the said W. P. Holland, had sought that relief against the wife as to the property and funds conveyed to her with the "actual and constructive intent of defrauding creditors of the husband;" that upon

the filing of said original bill, all persons, including the defendant in the present proceeding, William E. Lamb, who was the attorney of said Florence T. Holland, became "charged with constructive knowledge of the rights of the plaintiff in said cause;" and that the defendant, Lamb, as well as other persons, "thereafter taking or receiving any part or portion of the said estate of the said Florence T. Holland took the same impressed with the trust aforesaid, and with knowledge of the rights of the parties aforesaid, and with the duty and obligation upon their part to return the same upon the due orders and judgment of this court and any other court of competent jurisdiction;" that the defendant Lamb, although a resident and citizen of Chicago, Ill., "was employed by the said Florence T. Holland to defend said suit aforesaid" (cause No. 129 in equity); that the said Lamb "accepted said employment and obtained, prior to the receipt of any moneys as herein set forth out of said estate, full and actual knowledge of the facts stated in said Bill of Complaint, and of the actual facts relative to the transactions mentioned and described therein;" that notwithstanding said knowledge, he "caused the said Florence T. Holland, between the dates of August 8, 1928, and April 12, 1930, to pay him large sums of money in cash out of said estate, which said sums of money plaintiff alleges aggregated a total amount, of which plaintiff has knowledge of Seventy thousand, three hundred and eighty and 36/100 ($70,386.36) Dollars, as shown by itemized statement attached, marked Exhibit A and made a part of the petition; that the said sums were paid by the said Florence T. Holland to the said defendant, under guise of the payment to the said William E. Lamb of fees as an attorney for the defense of said suit No. 129, but plaintiff states that the said Florence T. Holland was without right at law or in equity to pay the said sums out of said funds, constituting a trust as aforesaid, and said defendant was without lawful right to accept the same, and that in accepting the same he, the said defendant, took the same impressed with said trust. Plaintiff prayed for service and for the stating of an account between him and the defendant of the sums paid "by said Florence T. Holland, and that it be determined and adjudicated that the funds so received by the said defendant are trust funds as aforesaid, and that it be further decreed that the said sums of money so

found be returned to the plaintiff, to be dealt with by him in accordance with the orders and decrees of this court in said case No. 129." Exhibit A attached to the petition showed payments made to defendant beginning August 8, 1928, in the sum of $10,000 and continuing to April 12, 1930, totaling the sum alleged, to-wit, $70,386.36. The petition in this case, in paragraph 3 also makes "reference to the said case (No. 129) * * * and special reference being made to the terms of said decree, whereby plaintiff was appointed and empowered by the terms of said decree and by law to sue for and collect and receive the entire estate of Florence T. Holland, one of the defendants in said cause, No. 129."

The citation or subpœna was in the usual form in equity, dated April 30, 1930, and on the same day was personally served upon defendant within the jurisdiction of the court below by the marshal thereof.

Defendant Lamb appeared and moved to quash the service "on the ground that he was then and there privileged and immune from service of any process issuing from this court in the case," for the reasons, (1) he was a citizen and resident of the state of Illinois; (2) that he was within the jurisdiction of the court below under compulsory process issued on a rule for contempt in the said suit No. 129; (3) that he was further present in said jurisdiction as attorney for W. P. Holland, in certain suits brought against him in said court, and as "attorney of record for Florence T. Holland in cause No. 129 in equity, aforesaid * * *;" (4) that he appeared in court on said 30th day of April, 1930, when the present suit was served "in answer to said citation (for contempt) following the entry of final decree in said cause No. 129; that after his appearance in response to said citation said judge entered an order continuing the hearing on said citation until June 9, 1930;" and that thereafter, while waiting to catch a train for the purpose of returning to his home in Illinois, the process in this case was served upon him at Clarksdale, in said district; (5) that at the time of the attempted service, he had no other business that "caused or required him to be in said Northern District of Mississippi, nor was he there in pursuit of pleasure or for any other cause or reason whatever than as hereinabove set forth;" and (6) "except for the matters hereinabove set forth, said William E. Lamb would not have

been in the Northern District of Mississippi at the time of the attempted service of process upon him."

The court below quashed the service and dismissed the bill.

It could, of course, take cognizance of the proceedings in suit No. 129 in equity, as to which the bill in the present case was ancillary. The original bill with the exhibits attached thereto, and interrogatories addressed to the several defendants therein filed June 23, 1928, were offered in evidence and have been brought up with the record in the case. It was alleged therein that a receiver should be appointed to take charge of the estate, both real and personal, of the defendant Florence T. Holland, and on the 8th day of January, 1929, an amended bill was filed wherein it was further asked that a receiver be appointed "to take charge and conserve the corpus of the said estate of the said Florence T. Holland * * *," and attached thereto were additional interrogatories propounded to other persons.

The original bill in suit No. 129 was against the said Florence T. Holland and a large number of banks and other persons to have property, rights and credits, alleged to amount to several hundred thousands of dollars, decreed to belong to William P. Holland and to have them impressed with a trust and lien in favor of the creditors whose interests were represented by the plaintiff. As previously stated, both in the original and amended petitions, plaintiff alleged facts and circumstances warranting appointment and in the latter prayed for the appointment of a receiver and for an accounting.

On April 30, 1930, the lower court rendered a judgment, "the parties plaintiff and intervenor expressly agreeing thereto in open court and likewise the said Florence T. Holland are (?) agreeing to the matters and things in this decree contained, the Planters Manufacturing Company not to be prejudiced hereby or William E. Lamb, or Butler, Lamb, Foster & Pope, not to be prejudiced hereby." This decree found that William P. Holland was indebted to some fourteen banks by virtue of judgments rendered in the court below and in a state court of Mississippi, aggregating $7612,730.84; it also stated that "the said indebtedness so evidenced by said judgments and so hereby decreed, is hereby declared to be fixed as a lien from the date of the

filing of the original bill in this case, upon the entire estate of the defendant, Florence T. Holland, consisting of property, real, personal and mixed, and of every kind wheresoever situated and especially upon the property as hereinafter described, and the said estate of the said Florence T. Holland is hereby declared to be and to have been from May 1, 1920, a trust fund held in trust by the said Florence T. Holland for the benefit of the plaintiff and intervenors in this case, hereby decreed to be and to have been creditors of the said W. P. Holand." The said decree further appointed a receiver "of the entire estate of Florence T. Holland, and she, the said Florence T. Holland, and all other persons whomsoever are hereby directed and commanded to deliver to him, as such receiver, forthwith, all of the property of every kind and character by her, they, or any of them held which said property, when so delivered to said receiver shall be subject to the further orders of this court." The said Florence T. Holland was further ordered to deliver a large quantity of stocks, notes, cash in banks, personal and real property, by specific description to the receiver. It was further provided in said decree as follows:

"Said Receiver is hereby invested with full power and authority to institute and/or prosecute in any Court of proper jurisdiction at law or in equity any suit or proceeding against any and all persons whomsoever seeking to recover possession and/or control and/or damages in connection with the rights hereby vested in him."

From what has been set forth hereinabove, it is evident that, from the inception of the suit No. 129 in equity, it was intended that the lower court should take charge of said property and the subsequent decree of the court actually impressed upon all of it in the hands of Florence T. Holland, or under her control, a trust and lien in favor of the creditors of her husband, as having been conveyed in fraud of their rights. All of the parties to that litigation, particularly the defendant Florence T. Holland and her attorneys, knew that if the allegations of the bill were sustained and the relief sought was granted, the court would be compelled to draw to itself for administration and disposition all of the property and funds so claimed. That bill was filed on June 23, 1928, and the petition in the present case al-

leges that the payments were made to Lamb long after citation in said cause No. 129 and for services in defending said Mrs. Holland therein, beginning August 8, 1928, and continuing to April 12, 1930, some eighteen days before the final decree in said suit was entered and the citation in this case served on April 30th. In such circumstances, could the defendant, Florence T. Holland, or her agent, make any disposition which would defeat the jurisdiction of the court over the property upon which the trust and lien were sought to be created? There might be some question as to the effect of such a transfer, if the money had passed into the hands of an innocent third person without knowledge of the pendency of the bill; but it seems reasonably clear to us that neither she nor her agent or attorney, having knowledge of the suit and its purposes, could ignore it and dispose of the property to be affected in a manner to defeat that jurisdiction. Lang vs. Choctaw Oklahoma, etc., 160 Fed. 365. If she, Mrs. Holland, could remove a part, then she might do so as to the whole property, with the result that the court's decree, when rendered, would be futile, or the plaintiff be compelled to pursue the property into whatever jurisdiction she might see fit to carry it. Such is the possible consequence of a holding of that nature, and we think demonstrates the soundness of the doctrine of constructive possession, flowing from a proceeding in equity of the character of suit No. 129. If the plaintiff could not do this herself we can see no more reason for holding that it could be done indirectly through her attorney, whether under the claim of paying attorney's fees, or otherwise.

"Where a bill in equity brings under the direct control of the court all the property and estate of the defendants, or of certain named defendants, or certain designated property of all or of either of the defendants, to be administered for the benefit of all entitled to share in the fruits of the litigation, and the possession and control of the property are necessary to the exercise of the jurisdiction of the court, the filing of the bill and service of the process is an equitable levy on the property, and pending the proceedings such property may properly be held in gremio legis. The actual seizure of the property is not necessary to produce this effect, where the possession of the property is necessary to the granting of the relief sought. In such cases the commencement of the suit is sufficient to give the court

whose jurisdiction is invoked the exclusive right to control the property." Illinois Steel Company vs. Putnam, 68 Fed. (5th Cir.) 517. See also Adams vs. Mercantile Trust Company, 66 Fed. (5th Cir.) 620, and cases cited; C. J., Vol. 34, p. 200.

In view of this principle of the law, we do not think the court can be deprived of its power over a portion of the property or funds by the attorney for the defendant coming into its jurisdiction and taking it away, even in satisfaction of his fees; neither do we think that process to prevent such a course or to compel restoration can be defeated by pleading the immunity usually accorded practitioners when actually engaged in their professional duties before such court. This immunity is more for the protection of the court itself and to prevent interference with its proceedings, than for the benefit of the attorney. Stewart vs. Ramsey, 242 U. S., 128. To allow it to defeat proper process for the control of such property, would be to destroy the very basis of the rule itself, i. e., the orderly functioning of the court.

Our conclusion is that the service in this case was erroneously quashed.

Reversed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 6072

WILLIAM A. SCHMITT, Receiver,

versus

WILLIAM E. LAMB

JUDGMENT—April 9, 1931

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Mississippi, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, reversed;

It is further ordered, adjudged and decreed that the appellee, William E. Lamb, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

MOTION AND ORDER EXTENDING TIME TO FILE PETITION FOR REHEARING—April 24, 1931

On motion of W. Calvin Wells and Arvid B. Tanner, counsel of record herein, who herein appear as attorneys for and on behalf of the defendant and appellee, William E. Lamb, and on suggesting to the Court that Messrs. Emile Godchaux and R. C. Milling have been associated and employed as additional counsel for the defendant and appellee in this case; and upon further suggesting to the Court that their association has taken place since the handing down of the opinion and decree in this cause on the 9th day of April, 1931; and on further suggesting to the Court that it is the desire and intention of the defendant and appellee, William E. Lamb, to cause to be filed an application for a rehearing in this cause; and upon further suggesting to the Court that the said Emile Godchaux and R. C. Milling will be unable, within the time allowed under the rules of this Court for the preparation and filing of such application for rehearing, to sufficiently familiarize themselves with the record and the issues in this cause to enable them to intelligently assist in the preparation of said application and a brief in support thereof; and upon further suggesting to the Court that W. Calvin Wells, resides in Jackson, Mississippi, Arvid B. Tanner resides in Chicago, Illinois, Emile Godchaux and R. C. Milling reside in the City of New Orleans, Louisiana, and that the defendant, William E. Lamb, resides in the City of Evanston, Illinois, and it is therefore difficult for counsel to conveniently confer concerning the matters and things involved in the preparation of such application for rehearing and said brief; and upon further suggesting to the Court that for the reasons above set forth it is the desire that further time for the filing of an applica-

tion for a rehearing herein be allowed and that such time should be extended to the — day of ——, 1931; and it being further suggested to the Court that this request is made prior to the expiration of the time for the filing of an application for a rehearing herein;

Now, therefore, it is ordered that the time within which William E. Lamb may file his application for a rehearing in this cause be and the same is hereby extended to the 1st day of June, 1931.

New Orleans, La., this 24 day of April, 1931.

(Signed) Rufus E. Foster, Judge. (Signed) W. Calvin Wells, Arvid B. Tanner, Emile Godchaux, R. C. Milling.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION FOR REHEARING—Filed June 1, 1931

Comes now appellee by his attorneys and respectfully petitions this Honorable Court to grant a rehearing in this cause. As grounds for his said petition appellee respectfully shows:

I

The sole question before this court was whether or not appellee was immune from service on the ground that he was a nonresident attorney actually attending upon a case then pending in the District Court. The only action taken by the District Court was the quashing of the service (Rec., 155-156); it did not dismiss the bill, as erroneously stated in the opinion of the court. (Opinion, p. 4.) The single fact involved was whether or not appellee was occupying that role exclusively at the time of service, and that was the sole fact to be inquired into and decided. Consequently, the court erred in going beyond the ascertainment of that fact and in inquiring into or expressing any opinion or basing its decision upon the allegations or the merits of the bill of complaint or upon any other facts connected with the controversy. The rule of immunity is inflexible in so far as the service of ordinary civil process is concerned,

and there can be no occasion to search the record for an exception to the rule.

II

Even if, upon a consideration of the motion to quash service on the ground of appellee's immunity, this court was privileged to consider the allegations of the bill of complaint or other facts, the facts as stated by the court upon which its decision is based, are not borne out by the record, nor is the law cited in the opinion of the court applicable, in that:

(a) The court finds that the original bill herein is a general creditors' bill, when the fact is that the bill was brought solely for the benefit of the original plaintiff and has none of the attributes of a creditors' bill.

(b) The court found that the object of the bill was to draw into the custody of the court all property of every character owned or possessed by Mrs. Holland, when the fact is that the bill on its face disclosed that there was separate property owned by Mrs. Holland which the bill did not seek to bring within the custody of the court.

(c) The court found that the funds paid to Lamb were part of the property intended to be impressed with a lien, when the fact is that there is no proof that these funds were part of such property. They may have been derived from the separate estate of Mrs. Holland alleged in the original bill to have existed or from other independent sources.

(d) The court has invested with legal effect as against Lamb the so-called final decree entered by consent of the parties to the proceedings, when as a fact this so-called decree is nothing more than a mere agreement between the parties, has no judicial compulsion or probative force and on its face expressly provides that it shall be wholly without effect as to Lamb, who was not a party thereto. That the decree is a consent decree and was not to affect Lamb is shown by the face of the decree (Rec., 93-94) and by the affidavit of Sam C. Cook, Esq., one of plaintiff's attorneys, introduced by plaintiff in evidence on the hearing of the motion to quash service. (Rec., 140-145.)

(e) The court has held that the effect of this so-called final decree was to finally impress a lien upon all of the

property of Mrs. Holland, when the fact is that the decree upon its face shows that some property was exempted from the effects of the decree, obviously for the benefit of Mrs. Holland.

The court's decision is therefore based upon erroneous statements of facts and principles of law not applicable to the true facts in the record.

III

The decision of this court deprives appellee of his property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that it gives to said consent decree an effect and consequence which it does not have and adversely affects the property rights of appellee without according him a hearing.

IV

Independent of any other considerations and solely for the purpose of preventing misapprehension and confusion that may arise as to the effect of the language of the court's opinion and of its decision, a rehearing should be granted because the language employed by the court in its discussion of the pleadings and facts is such that the claim might be made upon a further hearing of this cause that this court has finally found and foreclosed further inquiry with respect to certain facts essential to the decision of the controversy on the merits. Such could not have been the intention of the court since the sole question here considered and determined was the validity of the service of process upon appellee.

Wherefore, the premises considered, appellee prays that this application for rehearing may in due course be considered and a rehearing granted.

Respectfully submitted.

Emile Godchaux, New Orleans, Louisiana; Roberts C. Milling, New Orleans, Louisiana; W. Calvin Wells, Jackson, Mississippi; Arvid B. Tanner, Chicago, Illinois, Attorneys for Appellee. Milling, Godchaux, Saal & Milling, New Orleans, Louisiana; Wells, Jones, Wells & Lipscomb, Jackson, Mississippi, of Counsel.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING REHEARING—July 6, 1931

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 2, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,247. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 433. William E. Lamb, petitioner, vs. William A. Schmitt, receiver, etc. Petition for a writ of certiorari and exhibit thereto. Filed October 3, 1931. File No. 36,247.

FILE COPY

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CHARLES ELMORE C

IN THE

Supreme Court of the United States

October Term, 1931.

No. 433

WILLIAM E. LAMB, *Petitioner,*

vs.

WILLIAM A. SCHMITT, RECEIVER, *Respondent.*

PETITION FOR WRIT OF CERTIORARI

AND

BRIEF IN SUPPORT THEREOF.

(The jurisdiction included.)

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

October Term, 1931.

No. ——

WILLIAM E. LAMB, *Petitioner,*

vs.

WILLIAM A. SCHMITT, RECEIVER, *Respondent.*

PETITION FOR WRIT OF CERTIORARI

AND

BRIEF IN SUPPORT THEREOF.

(The jurisdiction included.)

May It Please the Court:

The petition of William E. Lamb respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The question involved is whether a circuit court of appeals erred in determining petitioner's right to

immunity from service of a summons in equity while attending court in a foreign jurisdiction solely upon a consideration of the nature and merits of the cause of action pleaded against him, and in reversing the district court and depriving petitioner of immunity because of its opinion with respect thereto.

Petitioner is an attorney residing at Evanston, Illinois (R. 109). He was served with summons in Clarksdale, Mississippi, on the evening of April 30, 1930. (R. 109.) The summons was issued out of the District Court for the Northern District of Mississippi. (R. 109.) At the time of service, petitioner was enroute to his home at Evanston, Illinois, after having on that day attended a session of the District Court for the Northern District of Mississippi at Yazoo City, Mississippi. (R. 109-113.)

On May 16, 1930, petitioner, not having previously appeared in any way, appeared specially in the district court for the sole purpose of moving to quash *service* of the summons on the ground that he was privileged and immune from the service thereof as a non-resident attending a session of court in that jurisdiction. (R. 96-99.) The motion was supported by an affidavit setting forth that the sole occasion for his presence in the district at the time the process was served was to be present, on the day the summons was served, at a hearing in the District Court for the Northern District of Mississippi as an *attorney of record* for one of the defendants in the case of *S. B. Cramer v. Florence T. Holland, et al.*, No. 129 in equity, there pending, and also as a respondent in a contempt proceeding brought against him in that case, and that, except for these reasons, he would not have been within the jurisdiction of the

District Court for the Northern District of Mississippi at the time the summons was served. (R. 108-113.)

B.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. The question involved concerns the jurisdiction of the District Court for the Northern District of Mississippi over petitioner in this case. The decision of the court of appeals on that question is in conflict with the decisions of this Court.

Page Co. v. MacDonald, 261 U. S. 446.
Stewart v. Ramsay, 242 U. S. 128

It is likewise in conflict with a decision of the Circuit of Appeals for the Seventh Circuit.

Durst v. Tautges, Wilder & McDonald, 44 Fed. (2d) 507.

2. Unless this court issues its writ of certiorari at this time, petitioner will be deprived of his immunity and will be required to stand trial in the District Court for the Northern District of Mississippi, notwithstanding he is entitled to immunity and cannot be required, under the decisions of this Court, to stand trial in that district.

3. The circuit court of appeals erred in determining the issue of petitioner's immunity from civil process solely upon a consideration of the nature and merits of the cause of action pleaded against him, and in not determining that issue solely upon a consideration of the reason for his presence in the district at the time the process was served.

4. The circuit court of appeals erred in reversing the judgment of the district court.

WHEREFORE, this petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify to and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of the proceedings in the case numbered and entitled on its docket 6072, *Wm. A. Schmitt, Receiver, Plaintiff, Appellant, v. Wm. E. Lamb, Defendant, Appellee,* and that the said judgment of the Circuit Court of Appeals for the Fifth Circuit may be reviewed by this Honorable Court and that this petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

WILLIAM E. LAMB,
Petitioner,

By

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

THE OPINIONS OF THE COURTS BELOW.

The opinion of the Circuit Court of Appeals for the Fifth Circuit was rendered April 9, 1931, and is reported in 48 Fed. (2d) 533. (R. 169) The opinion of the District Court is reported in 43 Fed. (2d) 770. (R. 156)

II.

JURISDICTION.

1. The statutory provision believed to sustain jurisdiction is section 347, Title 28, of the United States Code.

2. The judgment sought to be reviewed became final upon the denial of the petition for rehearing on July 6, 1931. (R. 181.) The judgment was first entered on April 9, 1931. (R. 176.) The time for filing a petition for rehearing was extended to June 1, 1931, by an order of the Court of Appeals entered April 24, 1931 (R. 176-177), and the petition for rehearing was filed on June 1, 1931. (R. 178.)

3. The suit, in which the judgment sought to be reviewed was rendered, was brought in the District Court for the Northern District of Mississippi to recover attorneys' fees paid to petitioner while he was acting as one of the attorneys for one of the defendants in the case of *S. B. Cramer v. Florence T. Holland, et al.*, No. 129 in equity, also in that court. (R. 1-5.) The district court quashed service of the summons in this case on the ground that petitioner,

being a non-resident attorney in attendance upon the district court at the time of service, was immune from service of the summons. (R. 155-6.) Plaintiff appealed to the Circuit Court of Appeals for the Fifth Circuit (R. 156), which court, after reviewing the allegations made in the bill in that case, reversed the district court solely upon a consideration of the nature and merits of the cause of action pleaded and remanded the case. (R. 169-175.)

4. A case believed to sustain jurisdiction of this Court is:

Morris & Co. v. Ins. Co., 279 U. S. 405.

III.

STATEMENT OF THE CASE.

A statement of the case has been given under heading "A" in the petition and in the interest of brevity is not repeated.

IV.

SPECIFICATION OF ERRORS.

The errors intended to be urged are specified under heading "B"; paragraphs Nos. 3 and 4 in the petition, and in the interest of brevity are not repeated.

V.

ARGUMENT.

The Court of Appeals Erred in Reversing the District Court and in Holding that Petitioner Could Be Deprived of Immunity Because of the Nature of the Case Pleaded Against Him.

The object of the rule of immunity from process while attending court in a foreign jurisdiction is to

remove all incentive for non-residents to avoid appearing in that court. In *Page Co. v. MacDonald*, 261 U. S. 446, this court held that the rule of immunity is "inflexible" because the necessities of judicial administration require that it be inflexible. It also held that in determining whether immunity should be granted the nature or merits of the cause of action pleaded against the person claiming immunity is immaterial. In that case one of the grounds on which it was sought to make an exception to the rule was that the cause of action was based upon the conduct of the party seeking immunity while actually present in the jurisdiction where immunity was sought; but this Court held that that question was not material in determining whether immunity should be granted to a person whose presence in a foreign jurisdiction was solely for the purpose of attending a judicial proceeding in which that person was involved.

In *Stewart v. Ramsay*, 242 U. S. 128, this court held that the rule of immunity casts a *"perfect"* protection around every man who necessarily approaches a federal court in a jurisdiction foreign to him, and that this protection includes all parties whose appearances are necessary to aid in the presentation and determination of the case.

Under these decisions it has been held that the rule of immunity applies to non-resident attorneys appearing before courts in foreign jurisdictions as well as to parties and witnesses. *Durst v. Tautges, Wilder & McDonald*, 44 Fed. (2d) 507; *Read v. Neff*, 207 Fed. 890.

The decision of the circuit court of appeals in this case is inconsistent with these decisions. If immunity

is to be determined upon a consideration of the nature or merits of the cause of action stated, the only purpose of the rule will be defeated since its application will depend in each case, not upon the status occupied by the person seeking immunity, but upon the court's opinion of the very issue upon which it is sought to avoid a trial in a foreign jurisdiction.

Conclusion.

The jurisdiction of the District Court for the Northern District of Mississippi to render any valid judgment in this case depends upon its jurisdiction over this petitioner.

Under the decisions of this Court, it has no jurisdiction, and it is respectfully submitted that neither the district court nor the parties should be required to engage in the trial of a case in which the district court has no jurisdiction to render a valid judgment. It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers at this time in order that the District Court for the Northern District of Mississippi may not be compelled to assume jurisdiction in a case where it cannot render a valid judgment, and that to such end a writ of certiorari should be granted and this court should review and reverse the decision of the Circuit Court of Appeals for the Fifth Circuit.

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 433

WILLIAM E. LAMB, *Petitioner,*

vs.

WILLIAM A. SCHMITT, RECEIVER, *Respondent.*

REPLY OF PETITIONER TO RESPONDENT'S STATEMENT OF FACTS AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

October 23, 1931.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 433

WILLIAM E. LAMB, *Petitioner*,

vs.

WILLIAM A. SCHMITT, RECEIVER, *Respondent*.

REPLY OF PETITIONER TO RESPONDENT'S STATEMENT OF FACTS AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

Respondent's reply admits (p. 5) that at the time and place of service petitioner was a non-resident in attendance upon the district court as an attorney of record and as a respondent in a contempt proceeding, and does not deny that these were the sole reasons for his presence in the district at that time. Under the decisions of this Court no other questions of fact are open to inquiry on the issue involved in this case, and

the single fact necessary to entitle petitioner to immunity is thus established.

Page Co. v. Macdonald, 261 U. S. 446.
Stewart v. Ramsay, 242 U. S. 128.

The Court of Appeals went beyond this issue. It deprived petitioner of immunity because it did not confine the inquiry to the only pertinent question of fact involved but rested its decision solely upon a consideration of the nature and merits of the cause of action pleaded. In so doing that court has rendered a decision which is in conflict with decisions of this court and has nullified a rule which this court holds is founded upon the very necessities of judicial administration.

Page Co. v. Macdonald, 261 U. S. 446.
Stewart v. Ramsay, 242 U. S. 128.

Respondent's reply follows the decision of the Court of Appeals. It merely reviews what are erroneously assumed to be the merits of the case pleaded.

Every argument advanced by respondent is based upon the assertion, made on page 11, that in determining petitioner's right to immunity the allegations of the bill of complaint in this case must be taken as true. The assertion is made notwithstanding this court has expressly held that the allegations of the bill cannot be assumed to be true.

Page Co. v. Macdonald, 261 U. S. 446.

Building solely upon this assumption respondent directs his arguments toward showing that since the bill

alleges that, by its decree in No. 129, the District Court took jurisdiction *in rem* of the entire estate of Florence T. Holland, the record discloses a conflict between the rule of immunity from process and the rule that a federal court, having once acquired jurisdiction *in rem* of specific property, withdraws that specific property from the jurisdiction of every other court so far as it is necessary to accomplish the purpose of the suit (pp. 9-11). The alleged conflict is immaterial because it is dependent upon the assumption that allegations of the bill of complaint are true. Furthermore the alleged conflict does not exist. The rule of exclusive jurisdiction, which is merely a rule for determining priority of jurisdiction *in rem* of specific property as between different courts, has no application in this case because, even admitting for the sake of argument, respondent's unfounded assumption that the district court, at some time, had jurisdiction *in rem*, of the money paid to petitioner as attorneys' fees in No. 129, respondent's own evidence introduced on the motion, shows conclusively that even if it could be held that the district court had acquired jurisdiction over the fees paid to petitioner, such jurisdiction had been relinquished by it, with the approval of plaintiff and all interveners in No. 129, who are respondents in No. 432 in this court, on the same day the bill in this case was filed. Respondent introduced, on the motion in this case, the decree entered in No. 129, an affidavit of one of his counsel, and the record in the contempt proceeding involved in No. 432. The first shows that No. 129 was terminated by a consent decree providing that it was *without prejudice* to petitioner (R. 93, 94). In the second, counsel solemnly swears not only that No. 129 was terminated by a

consent decree containing a provision that it should be without prejudice to petitioner, but also that the consent decree represented a voluntary compromise and settlement of No. 129 between the parties thereto after a week's negotiation, and that it was expressly submitted to and approved by the court merely as a settlement of the case (R. 140-145). It was thus a mere expression of the will of the parties and not a judgment of the court.

Hodgson v. Vroom, 266 Fed. 267.

The third shows that No. 129 was settled, and the consent decree providing that it should be without prejudice to petitioner, was entered, on April 30, 1930, which was after all parties and attorneys in cause No. 129 had full knowledge of the receipt by petitioner of the fees sought to be recovered in this cause (R. 94). Thus, while the question is not material on the issues involved, except to show the wisdom of the rule precluding consideration of the merits on a motion of the kind made in this case, it is apparent that the alleged conflict does not and did not exist at the time the judgment of the district court was entered, even if the merits are considered.

Respondent's attempted distinctions between this case and *Page Co. v. Macdonald,* 261 U. S. 446; *Stewart v. Ramsay,* 242 U. S. 128; and *Durst v. Tautges, Wilder & McDonald,* 44 Fed. (2d) 507, are also based solely upon the assumption that the allegations of the bill are true. It is claimed first, that the cause of action in this case is also involved in the summary proceeding for contempt in No. 432, whereas no such situation existed in the cases cited (p. 8), and, second,

that if immunity is granted in this case non-resident attorneys can with impunity decamp with property in the process of being seized by a district court (pp. 11, 12). Since the alleged distinctions are based upon assumptions involving the merits of the case, they are immaterial.

Furthermore, even if the merits of this case could be considered, the distinctions are immaterial. If petitioner had interfered with the custody of the court in No. 129, which he had not, the only remedy authorized by orderly procedure was the contempt proceeding brought against him in that case. The court of appeals had no jurisdiction to deprive him of immunity from the process in this case as punishment for an alleged contempt of court committed in No. 129.

Hovey v. Elliott, 167 U. S. 409.
Ex Parte Robinson, 86 U. S. 505.

Respondent also argues that the writ of certiorari should not issue because the judgment of the court of appeals is interlocutory. Section 347, Title 28, U. S. Code is clear on this point. The Court has jurisdiction to issue the writ of certiorari at any time and it has repeatedly done so to review interlocutory orders.

A case directly in point is *Morris & Co. v. Skandinavia Insurance Co.,* 279 U. S. 405.

Among other cases where interlocutory orders have been reviewed on certiorari are:

Forsyth v. Hammond, 166 U. S. 506.
Spiller v. Atchison, Topeka & Santa Fe Ry. Co., 253 U. S. 117.
United States v. Gulf Refining Co., 262 U. S. 738.

Geo. A. Fuller Co. v. Otis Elevator Co., 245 U. S. 489.

Respondent also argues that the question presented by this petition is not of general importance. This court has held that the rule of immunity from process while attending court in a foreign jurisdiction is founded upon the very necessities of judicial administration and that in the very nature of the case its application can not depend upon the nature or merits of the cause of action pleaded.

Stewart v. Ramsay, 242 U. S. 128.
Page Co. v. Macdonald, 261 U. S. 446.

It is submitted that an issue involving a privilege founded in the very necessities of judicial administraton is of the utmost general importance. The facts requiring the granting of immunity in this case are not controverted. The decision of the court of appeals is directly and fundamentally contrary to the decisions of this court. If the decision of the court of appeals is adopted the rule of immunity is worthless because it will no longer serve the purpose for which it was intended. The question presented is therefore of the same order of importance as the rule itself.

It is respectfully submitted that the reply assumes the only point involved and thus contributes nothing toward its determination.

Respectfully submitted,

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

October 23, 1931.

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CHARLES ELMO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 433.

WILLIAM E. LAMB, *Petitioner,*

vs.

WILLIAM A. SCHMITT, RECEIVER, *Respondent.*

BRIEF ON BEHALF OF PETITIONER.

EDWARD B. BURLING,
EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 433.

WILLIAM E. LAMB, *Petitioner,*

vs.

WILLIAM A. SCHMITT, RECEIVER, *Respondent.*

BRIEF ON BEHALF OF PETITIONER.

I.

OPINIONS OF THE COURTS BELOW.

The opinion of the Circuit Court of Appeals for the Fifth Circuit was rendered April 9, 1931, and is reported in 48 Fed. (2d) 533. (R. 169-175.) The opinion of the District Court is reported in 43 Fed. (2d) 770. (R. 156-160.)

II.

STATEMENT OF THE CASE.

The writ of certiorari in this case was granted November 2nd, 1931, to bring to this Court for review the judgment of the Circuit Court of Appeals for the Fifth Circuit rendered April 9, 1931. The judgment reversed an order of the United States District Court for the Northern District of Mississippi.

The order of the District Court was an order which quashed service made on the petitioner within the Northern District of Mississippi, of a summons issued by that court. The service was quashed because the court found that Lamb was, at the time of such service, an attorney at law resident in the State of Illinois, and was present in the Northern District of Mississippi for the purpose of attending a hearing in an equity case pending in the same court as attorney of record for one of the defendants therein, and as a respondent in a contempt proceeding in the same case, and for no other purpose, and was therefore immune from the service of process. (R. 155-156, 96-99.)

The sole question before this court is therefore whether under the circumstances the petitioner Lamb was exempt from service of process.

The suit in which the summons was issued was begun against the petitioner Lamb by the respondent Schmitt as Receiver. He had been appointed Receiver in a creditor's suit pending in said District Court entitled *Sterling B. Cramer v. Florence T. Holland,* Cause No. 129. The bill in the case now before the Court alleged that Lamb had, while said

Cause 129 was pending and prior to a decree therein, accepted payment of fees from Florence T. Holland. The bill further alleged that by the final decree in said Cause 129 the entire estate of Florence T. Holland was impressed with a trust as of the date of the filing of the bill in said cause for the benefit of said Cramer and other creditors of W. P. Holland who might intervene. The receiver then asserted that Lamb had notice of the rights of the creditors and therefore the payments made to him by Mrs. Holland were subject to the terms of the trust. The bill prayed that Lamb be decreed to return all such payments to the Receiver. (R. 1-5.)

The subpoena in due form was issued on this bill of complaint on April 30, 1930, and was served on petitioner in Clarksdale, Mississippi, on the evening of the same day. (R. 94-95.) At the time of service, petitioner was en route to his home at Evanston, Illinois, after having on that day attended a session of the District Court for the Northern District of Mississippi at Yazoo City, Mississippi. (R. 109-113.)

On May 16, 1930, Lamb, not having previously appeared in any way, appeared specially in the District Court for the sole purpose of moving to quash *service* of the summons on the ground that he was privileged and immune from the service thereof as a non-resident attending a session of court in that jurisdiction. (R. 96-99.) The motion was supported by an affidavit setting forth that the sole occasion for his presence in the district at the time the process was served was to be present, on the day the summons was served, at a hearing in the District Court for the Northern District of Mississippi as an attorney of record for one of the defendants in the case

of *S. B. Cramer v. Florence T. Holland, et al.,* No. 129 in equity, there pending, and also as a respondent in a contempt proceeding brought against him in that case, and that, except for these reasons, he would not have been within the jurisdiction of the District Court for the Northern District of Mississippi at the time the summons was served. (R. 108-113.)

Counter affidavits of Sam C. Cook (R. 140-145) and Joseph F. Ellis (R. 145-147), and the oral testimony of Gerald FitzGerald (R. 148-154), and copies of the original and supplemental bills and the final decree in cause No. 129 (R. 7-64; 64-78; 78-94), and of Lamb's answer to the citation for contempt (R. 116-140), were received in evidence in opposition to the motion. (R. 114-116.)

On October 9, 1930, the District Court granted the petitioner's motion and entered a decree quashing the service of process. (R. 155-156.)

On April 9, 1931, the Court of Appeals reversed the decree quashing the service. In its opinion (R. 169-175), 43 Fed. (2d) 533, the court held that the funds which the bill of complaint charged Lamb with accepting were within the constructive possession of the court in cause No. 129, and that Lamb was not entitled to claim, in a suit against him for the recovery of such funds, the immunity from service of process "usually accorded practitioners when actually engaged in their professional duties before such court." (R. 175.)

III.

SPECIFICATION OF ERRORS.

1: The Circuit Court of Appeals erred in reversing the decree of the District Court.

2. The Circuit Court of Appeals erred in determining the issue of petitioner's immunity from service of civil process solely upon consideration of the nature and merits of the cause of action pleaded against him.

3. The Circuit Court of Appeals erred in not determining the issue of petitioner's immunity from service of civil process upon consideration of the reason for his presence in the district where the process was served.

IV.

SUMMARY OF ARGUMENT.

The general rule was conceded by the Court of Appeals and was not denied by the respondent that a non-resident present in a foreign jurisdiction solely because of attendance in court is immune from service of process. That the petitioner Lamb came within the general rule was also conceded. Therefore the only question is whether the present case presents any peculiarity which should constitute it an exception to the general rule.

The Court of Appeals' opinion does not disclose clearly what exception is intended to be created, and an examination of all possible exceptions fails to disclose anything in its support.

ARGUMENT.

A.

Lamb Was Present in the Jurisdiction as a Party and as an Attorney and was Therefore Exempt from Service of Process and the Order of the District Court Quashing the Service was Correct.

The general rule that a non-resident while attending court in a foreign jurisdiction shall be exempt from service of process was not denied by the Court of Appeals and is not denied by Respondent. And it was found by the District Court and conceded by the Court of Appeals that Lamb at the time he was served was a non-resident present in Mississippi solely as a party and as an attorney for a party in court proceedings then pending.

Whether this exemption from service be called a privilege of the Court or of the party would seem to be irrelevant. It is not in a strict sense a *privilege* at all. Rather we are dealing with a *rule of law* supposed to promote the administration of justice. That courts should be able to conduct their business in a free and unhampered fashion is regarded as important. To that end it has been established as a rule of law that witnesses, parties litigant, and attorneys shall not be deterred from attending Court through fear of molestation by process servers. If process is served on persons who are in the jurisdiction solely on business with the Court such service will be quashed.

Stewart v. Ramsay, 242 U. S. 128.
Page Co. v. Macdonald, 261 U. S. 446.
Central Trust Co. v. Milwaukee St. Ry. Co., 74 Fed. 442.

Read v. Neff, 207 Fed. 890.
Durst v. Tautges, Wilder & McDonald, 44 Fed. (2d) 507.

Lamb admittedly was in Mississippi on Court business and should have been free from molestation by process servers in another suit unless there was some peculiarity attached to his presence there or some peculiarity in the nature of the suit in which the process was issued which makes this case an exception to the general rule. The argument before this Court must therefore concern itself, not with the general rule which is conceded, but with an inquiry whether there are any exceptions to the general rule and whether this case comes within any such exception.

B.

The Case Discloses no Reason for Creating Any Exception to the General Rule that Process Servers Shall not Molest Persons Who Are in the Jurisdiction Solely for Attendance on the Court.

The books and decided cases contain no exception to the rule which would be applicable in this case. The Court of Appeals, although admitting the general rule, refused to apply it. That Court must have considered that there was something about the present case that constituted an exception. But when we read their opinion, the particular exception to the rule they wish to establish is not made clear.

1. Apparently that Court did not mean to hold that there is an exception to the rule of exemption from service wherever the pleadings allege that the

wrong for which suit is brought was done within the jurisdiction of the Court. The precise point was raised in *Page v. Macdonald* (*supra*), and this Court decided that the rule of exemption from process was inflexible and that there was no such exception to the rule.

In that case the facts were that Mrs. Macdonald, a non-resident of Massachusetts, had brought a suit against the Page Company in Massachusetts. While she was in Massachusetts in attendance upon the Court in that suit, she was served with process in a suit by the Page Company for a libel alleged to have been perpetrated by making, in the pleadings in her suit, false statements which were not material to the issues therein. The contention was that by this conduct she had forfeited any claim to immunity from service of process.

In disposing of this contention this Court said:

> "The contention has strength upon first impression, which disappears upon reflection on the purpose of the principle and *the necessity of its inflexibility*. The service of process is upon the individual but the exemption from its requirement is something more than a privilege to him. It is 'the privilege of the court,' we have seen, rather than his. 'It is founded in the necessities of the judicial administration.'" (Italics ours.)

Furthermore the District Court found as a fact:

> "There is no allegation of any misconduct in this state by the defendant and no fact averred to overcome the inference that the alleged fees were receivd by him before he came here." 43 Fed. (2nd) 771.

Therefore we must look further for the exception if there be one.

2. That the suit in which the process was issued is an ancillary suit does not create an exception. It is ancillary only in the sense that it grows out of another suit and jurisdiction depends on the main cause and not on citizenship of the parties to the ancillary bill. But in all other respects it is like any other suit. In this case the bill is an ordinary bill in equity and the regular rules of equity procedure apply to it. Parties must be brought into the proceeding in the same manner as in case of an original bill. In *Pacific Railroad v. Missouri Pac. R. Co.* (C. C.), 3 Fed. 772, it was claimed that since the proceeding was ancillary, the ordinary rules as to service of process could be dispensed with. Mr. Justice Miller repudiated the suggestion in the following language:

> "The argument, by which it is endeavored to support the service of process upon persons without the district, is that the present suit is one that is auxiliary to the former suit in which the decree of foreclosure was had; that it is so far merely a continuation of that suit; and that it is not a new and original suit. * * * It may be conceded for the purposes of this motion that it is to a certain extent auxiliary to the original foreclosure suit, * * * But it also partakes so far of the nature of an original suit that the parties who are here contesting service of this process cannot be brought before the court by anything short of a subpoena in chancery; and cannot be compelled to answer and respond to the allegations of the present bill in any other mode than in the mode usually adopted in original chancery bills."

3. The Court of Appeals *may* have meant to make an exception of this sort, to wit: when a defendant has intermeddled with property constructively in the possession of the Court there can be no exemption from service in a suit to recover that property.

The decided cases recognize no such exception. But if there were such an exception to the general rule of immunity it would not justify the decision of the Court of Appeals, for it cannot be assumed that Lamb has intermeddled with property merely because it is so asserted in the bill. That is the very point which the bill seeks to litigate. The truth or falsity of the claim that Lamb has intermeddled with property in the possession of the Court cannot be determined until after a final judgment in the very cause in which the service is disputed.

If by the general rule a process server must not molest a person who has *not* taken the Court's property, but by an exception to the rule *may* serve a person who *has taken* Court's property—then that exception would not justify service on a defendant when the question of whether he has taken the Court's property is the very question brought into litigation in that very suit. If the propriety of the service on him depends on his character as a meddler with the Court's property, that fact must be judicially established not in that suit but by a prior adjudication.

In *Page v. Macdonald* (*supra*), this Court dealt with an identical contention: Mrs. Macdonald had begun suit in Massachusetts making allegations which Page believed to be libelous, and he accordingly brought suit for libel and had her served while she was in attendance at court. In supporting the service of

process it was argued that Mrs. Macdonald was guilty of a continuing tort within the court's jurisdiction. The court said that Mrs. Macdonald's character as a wrong-doer was not established. They said:

> "Besides, it cannot be assumed as plaintiff in error does, that the pleading in her (Mrs. Macdonald's) suit against plaintiff in error was false and a tort and on that assumption deny her the immunity to which she is entitled. The truth or falsity of the pleadings is not to be *assumed*, it is to be established." (Italics ours)

It is evident then that the opinion of the Court of Appeals cannot be explained as resting upon an exception permitting service of process where the defendant is guilty of intermeddling with property in the possession of the Court.

If the validity of service could possibly be made to depend upon the question whether or not Lamb was a man who had meddled with property in the possession of the Court, then not only was that fact not established affirmatively, the record establishes the negative.

The evidence, introduced by the respondent on the motion to quash the service of summons, shows that the monies received by the petitioner were payments for counsel fees received in the ordinary course of business. The petitioner was first employed in resisting claims for income taxes for a large sum (R. 120-123). Had these taxes been sustained it would have wiped out a great portion of the estate. In addition, the petitioner performed legal services for Mrs. Holland in said Cause No.

129. At the time the payments were made, the only claims of judgment creditors were claims aggregating $132,151.05.* The bill in Cause 129 alleged that Holland had transferred to his wife all of his estate which was alleged to have been worth in excess of $3,000,000. (R. 12, 15, 25, 32.) The bill also asserted that Mrs. Holland was "exceedingly rich and worth more than $2,000,000.00." (R. 32.) She also had a separate estate derived from sources other than transfers from her husband to her. (R. 134.) This separate estate was recognized by the original bill of complaint wherein it was charged that the transfers received from her husband were intermingled with property theretofore owned by her. (R. 26.) It thus appears that at a time when the claims asserted in the creditor's suit amounted to only about 5 per cent of the value placed upon Mrs. Holland's property by the suing creditors, Lamb accepted these counsel fees. There is no suggestion that the fees were excessive in amount for the services rendered. It was not until after all payments to the petitioner had been made, and only two weeks before the final decree in the creditor's suit, that judgments were recovered by the other banks aggre-

*The plaintiff, Cramer, in cause No. 129 was assignee of a judgment for $30,632.78 (R. 9-10, 51-52), which at the time the final decree was entered in the creditors' suit, had been reduced to $19,653.63, inclusive of interest to April 30, 1930 (R. 79). After the commencement of this suit a bank intervened on a judgment rendered in the state court in the amount of $98,681.97, which at the time of the final decree in the creditors' suit amounted to $112,497.42, inclusive of interest (R. 79). The sum of the amounts due on these two judgments was $132,151.05. These were the only judgments sued on until the intervention just preceding the entry of the consent decree, which intervention came after all the payments to Lamb had been made.

gating over $7,000,000. They were brought into that suit by intervention on the day following their recovery, and just thirteen days before the final consent decree in the creditor's suit was entered. (Rec. 79.)

At the time these fees were paid to Lamb no restraining order had been entered and no receiver appointed. The District Court found that there was nothing to overcome the presumption that the monies were received by Lamb outside the jurisdiction of the Court. The receipt of monies in payment of fees would therefore appear to have been entirely correct.

It would seem therefore that service of process cannot be sustained on the claim that Lamb was a meddler with property in the possession of the court, for if there be any such exception to the rule (which is doubted), then not only does respondent fail to show affirmatively that Lamb in fact *was* such a meddler, on the contrary the evidence seems to establish the contrary—that in fact he *was not* such a meddler.

4. Perhaps then the Court of Appeals meant to state an exception as follows: The rule of exemption from service extended to litigants, attorneys and witnesses is subject to this exception to wit, that it shall not apply where a receiver *asserts* in a bill in equity that a defendant has meddled with property constructively in the possession of the Court.

If the exception to the rule of exemption be stated in this form, the exception would not rest upon the *fact* that the defendant was a meddler with property in the possession of the court, but upon the mere *as-*

sertion in the pleadings that the defendant was a man who had so meddled. In order to deprive a defendant of the exemption accorded other defendants it would be enough to allege in the pleadings that he was a man who had meddled with property in the possession of the court. Allegations that a defendant meddled with the property of any ordinary citizen would not deprive him of the exemption, but an allegation that he had meddled with property in the Court's possession would create an exception and deprive him of his exemption. If the Court refused to quash the summons on this ground and later the allegation that the defendant had interfered with property constructively in the possession of the court were proved to be untrue, nevertheless jurisdiction would be maintained. Jurisdiction would depend on a mere *averment,* not on its truth.

There would seem to be no particular reason for such an exception to the rule. The advisability of the whole rule of immunity might be questioned but if immunity applies where the allegation is that a defendant has meddled with the property of an ordinary citizen, why should an exception be created in a case where the allegation is made by a Receiver? One fails to see any difference in the two cases which would warrant any difference in the rule. The reason for the general rule is that operations of the courts would be hampered if parties were deterred from attending by fear of process-servers. That reason is just as applicable where process is at the instance of a receiver as plaintiff as where it is at the instance of any other plaintiff. A party proposing to attend court in a foreign jurisdiction would be deterred just as much by service in a suit by a Receiver as in any other suit.

Finally it should be said that even if there were such an exception to the rule of immunity, this case does not come within it for the bill does not allege any intermeddling by Lamb with property in the constructive possession of the Court. The foundation for the bill is the decree in Cause No. 129. If there were no such decree then there would be no basis for the claim that there was any property in the possession of the Court to be meddled with. And yet as against Lamb that is precisely the situation.

The bill recites that by the decree in Cause No. 129 the entire estate of Florence T. Holland was declared to be a trust fund (Rec. 2) and that by the decree the allegations of the creditor's bill "have been solemnly adjudicated so to be true." This is the basis for the assertion that there was trust property constructively in the possession of the Court with which Lamb intermeddled. And yet as against Lamb the record discloses that there is no such decree. There was no *adjudication.* There was a compromise agreement which the Court permitted to be entered of record. The decree itself recites that it is entered by consent (R. 93), and the affidavit of one of the attorneys for the plaintiff in the cause, filed in opposition to the motion to quash, shows that the decree was the result of negotiations, and was not an adjudication and that Lamb took no part in these negotiations and declined to endorse his approval of the agreement when it was completed (R. 142-144). A decree of this character is not a judgment of the Court but merely an expression of the will of the parties who agree to it. *Hodgson v. Vroom,* 266 Fed. 267. Obviously it is no more binding upon Lamb than any other contract to which he is not a party.

The so-called decree in cause No. 129 also provided "William E. Lamb or Butler, Lamb, Foster and Pope, not to be prejudiced hereby." (R. 93-94) Even if it could be contended that a consent decree to which petitioner had not agreed, in a suit to which he was not a party, could be made the basis of a claim against him, the contention could not survive in the face of this provision. It constituted an express recognition that the trust impressed on the estate of Florence T. Holland which was established by the decree as between the parties consenting to it, was not established as against petitioner. It is therefore evident that the bill contains no sufficient allegations against Lamb that there was any trust fund established with which he could have intermeddled.

Therefore if there be an exception to the rule of immunity that it shall not apply in a case where the bill *alleges* intermeddling with property in the possession of the court the case before the Court does not come within the exception because the allegations are not sufficient to show that any trust has been established as against Lamb.

Probably the underlying reason for the decision of the Court of Appeals was that it would be more convenient to dispose in the District Court of Mississippi of all questions relating to this estate. It was perhaps felt to be inconvenient to apply the established rule of exemption from service of process. No doubt that is true, but every rule of law is inconvenient to someone. It is inconvenient for any ordinary plaintiff in a Mississippi court to have his service on a defendant quashed and to be unable to go on with the litigation; but he must submit to that inconvenience.

It is not perceived in what respect this case differs from any other case.

It is not true, as the Court of Appeals seemed to think, that the case involves the jurisdiction of the Court over the property. No rule of substantive law is before this Court. The only question is one of immunity from service of process. The decision of the Court in this case either way will not affect the Court's jurisdiction over the property or the title to the property. If the service is quashed the Receiver may have to proceed in a different way to make effective that jurisdiction. He may have to get service on Lamb at some other time or may have to sue Lamb in some other jurisdiction; but those facts do not affect the Court's jurisdiction over the property. The Court's jurisdiction over the property is no more affected than if some of the property were in the hands of other parties outside the state of Mississippi who declined to come within it.

It is submitted that the rule exempting from process persons in attendance at court is a wise one and that the facts of the present case present no reason for creating an exception; and that, accordingly the judgment of the Court of Appeals should be reversed.

Respectfully submiltted,

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 433.

WILLIAM E. LAMB, *Petitioner*,

vs.

WILLIAM A. SCHMITT, Receiver, *Respondent*.

PETITIONER'S REPLY BRIEF.

EDWARD B. BURLING,
EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

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PETITIONER'S REPLY BRIEF.

This case presents the single issue whether, on the record itself there is any reason for refusing to apply the well settled rule that a non-resident present in the jurisdiction solely as a party and/or attorney in a pending suit, is immune from service of process.

The Respondent admits that the case comes within the scope of the general rule. He claims, however, that an exception should be made because of the "circumstances". These "surrounding circumstances" he blandly plucks out of the atmosphere.

Analysis of Record and Corrections of Respondent's Statements of Fact.

This makes it necessary to come back firmly to the *record*. The record on the motion to quash consisted of:

(1) Bill in the present case No. 162.

(2) Bill and amended bill in creditor's suit, case No. 129.

(3) Final decree in creditor's suit.

(4) Answer of Lamb to citation for contempt in case No. 129.

(5) Certain affidavits and testimony.

Respondent does not make it clear how the "circumstances" he relates give rise to an exception which has never been recognized by any court or text writer. But passing that, the existence of these "circumstances" is pure assumption on the part of Respondent. The *evidence in the record* does not prove any of them and they are not admitted by Lamb.

Respondent finds his "circumstances"

(1) in the allegations of the bill in the present case and the allegations of the bill in the creditor's suit.

(2) in the provisions of the final decree in the creditor's suit.

Neither of these is evidence against Lamb.

(1) It is elementary that a motion to quash does not operate as a demurrer and that the allegations of the bill are *not* admitted by such motion. Compare *Meisukas v. Greenough Red Ash Coal Co.*, 244 U. S. 54. Respondent, however, has throughout his argument assumed that the facts alleged and conclusions of law set forth in the present bill, which would be of course the ultimate questions on the merits, were con-

ceded by Lamb in his motion to quash. (Respondent's Brief, pp. 6, 12, 33) Respondent repeatedly asserts that:

> "The said motion did not and could not attempt *to deny* the facts set forth in the original bill." (Brief, p. 6)
>
> "There is not one single sentence in either of these pleadings [the motion and affidavit] *which attempts* to deny the allegations of the bill in No. 162, [the present suit] or which attempts to extenuate the taking of the money, or which alleges that the money was received out of the state." (Brief, p. 12) See also Brief, p. 32-33.

On this basis, Respondent contends, and the Circuit Court of Appeals apparently assumed, that on the hearing of the motion to quash service, it was established against Lamb that the property received by him was impressed with an equitable lien in favor of the creditors; that such property was in the constructive possession of the court, "*in gremio legis*", and that Lamb was obligated to return it. Petitioner respectfully submits that none of these matters had been determined, but, on the contrary, their determination against Lamb was the very purpose of the present suit. In short, Respondent is asking this Court, on a motion to quash, to assume the truth of every allegation in the complaint. Were this contention valid, any allegation in a bill of complaint concerning citizenship, presence, "doing business", etc., would, even in the face of affidavits showing lack of jurisdiction, necessarily have to be taken as true for the very purpose of determining the existence of such jurisdiction. No case has been cited for such an extraordinary proposition, and we do not believe it to be the law.

(2) Nor can the consent decree in the creditor's suit No. 129 be resorted to as evidence of any fact whatever. As against Lamb its allegations are not evidence and cannot be taken as true. Respondent himself caused to be filed an affidavit (R. p. 140) of one of his attorneys which recites that the decree was the result of negotiations in which Lamb had no part. Mr. Cook's affidavit recites that:

> "* * * conference was called for the purpose of negotiating a settlement * * * (R. 141) William E. Lamb was not present at any of said conferences and, so far as affiant had knowledge, he did not participate therein in any way * * * finally a tentative agreement was reached between counsel representing the plaintiff and interveners and counsel representing Mrs. Holland (with the exception of William E. Lamb) * * * (R. 142) the said William E. Lamb stated to affiant that he was out of the case and had nothing to do with the case at that time, that his services had been dispensed with" (R. 144).

When the draft of decree thus agreed upon was presented to the court,

> "* * * the presiding Judge * * * inquired if it was or was not a consent decree and, upon being informed that it was, said presiding Judge immediately signed said decree * * *. When affiant presented the final decree for the approval of said Lamb, he was requested by said Lamb to insert in said decree a provision that same should be without prejudice to him or Butler, Lamb, Foster & Pope. * * * This was agreed to (subject to the approval of his associates) by affiant, and the said provision was inserted in said decree, on the request of said Lamb by con-

> sent of all attorneys there present representing the plaintiff and interveners." (R. 144-145)

The foregoing analysis shows that the allegations of the two bills in equity and the provisions in the consent decree cannot be regarded as *evidence*. The remainder of the record consisted of Lamb's motion to quash and accompanying affidavit, his answer to the citation for contempt, two affidavits filed by Respondent and the oral testimony of Respondent's attorney. Petitioner's affidavit set forth simply Lamb's residence and the reason for his presence in Mississippi. The facts stated by Lamb on these points are conceded by Respondent to be true (Respondent's Brief, p. 6), and, in the latter's own words show:

> "That the petitioner was a non-resident attorney attending court in a foreign jurisdiction at the time of the service of the writ upon him; that he was also at the time * * * under process as a party." (Respondent's Brief, p. 7).

The answer to the contempt citation admitted merely that Lamb had received payment, detailed the services he had rendered, and explained the circumstances attending such payment. It clearly did not admit the allegations or conclusions of either the original creditor's bill, or of the present complaint.[1] The two affidavits, filed by Respondent, indicated that Lamb had expressly been excluded from the operation of the consent decree, in view of the then pending contempt proceeding (R. 140-145); and that he had received the payments (R. 145-147), a

[1] The petition and citation for contempt were attached to the motion to quash in order to show that Lamb was present as a party (R. 99). The allegations in neither were admitted.

fact never denied. The testimony of Respondent's attorney showed that the hearing on the contempt charge had been continued. (R. 153)

Such was the evidence, and the only evidence on which the District Court acted in considering whether the plea of immunity should be sustained, and such is the evidence before this Court on review. It showed merely that in a creditors' suit against Lamb's client, Mrs. Holland, a consent decree had been entered almost two years after the filing of the bill; that long prior to such decree Lamb had been paid for his services by Mrs. Holland; that a citation for contempt for accepting such payment had been issued against him and that he had answered the citation, a hearing on which had been continued; that while attending court as an attorney in the creditor's suit and/or party defendant to the contempt charge, he had been served with process in a suit by the Receiver appointed by the terms of the consent decree; that the complaint in such suit *alleged* that the monies received by him in payment had been subject to an equitable lien in favor of Mr. Holland's creditors; and, finally, that Lamb asserted his immunity from process.

Nevertheless, Respondent, in purporting to set forth the evidence, and in his arguments thereon (Brief, pp. 7-10), first states the allegations of the original creditor's bill and the terms of the consent decree, as though such matters were admitted by the motion to quash. We have already shown that such statements have not been admitted, but are strongly controverted in the present suit, and that the consent decree is not binding upon Lamb.

We discover finally that the only respect in which

this case differs from cases such as *Stewart v. Ramsay*, 242 U. S. 128, and *Page Co. v. Macdonald*, 261 U. S. 446, where this Court has approved the rule of immunity, is that it is a suit by a Receiver. Whether or not the suit is well founded, whether there was any trust fund, whether the fees paid Lamb came from the trust fund, whether the monies were paid within the jurisdiction of the court, whether the funds in question ever were within the jurisdiction of the court—all these questions must await a trial on the merits. They are not proved as against Lamb and are not admitted by him. And therefore they cannot be assumed in an inquiry into the propriety of quashing the summons. There is nothing in the *record* that bears upon *that* question except the bare fact that this is a suit on a chose in action by a Receiver.

There is another misconception to be corrected.

Respondent, in his present brief states as a fact, that Lamb was a party to the creditor's suit. This is based upon the theory that the citation for contempt and Lamb's reply thereto, amounted to a submission to the jurisdiction of the Court as a party in the original creditor's suit. Of course Lamb was a defendant in the contempt proceeding; but whether or not he had become a party to the original creditor's suit is the very question now awaiting determination by this Court in the companion case No. 432.

Certain inaccuracies may also be noted. Respondent refers (p. 9), again on the basis of mere allegations in the bill, to the intervention of the creditor banks holding in excess of $7,000,000 of judgments, as though such intervention had been pending when

Lamb received the payments for his services. Such interventions were not filed until April 17, 1930, after all payments to Lamb had been made. (R. 6, 79) Until they had intervened, these creditors could not possibly claim any lien upon or beneficial interest in Mrs. Holland's property.

Respondent's brief further states (pp. 9, 35), on the basis of mere allegations, that the Government intervention was pending throughout the entire suit. This intervention was dismissed on April 19, 1930, by order of the court on appliction of the Government, eleven days before the final consent decree. Therefore, since this Government claim was never brought to a successful conclusion, no equitable lien can even be alleged to have ever existed.

Thus Respondent does not deny the essential facts upon which the claim to immunity is founded, but on the basis of matters never proved and never admitted, and which could not properly be considered on the question of immunity, builds his argument that an exception should be created to the general rule of immunity. With the actual facts presented by the record clearly in mind, we may consider and reply briefly to each of his contentions.

RESPONDENT'S ARGUMENT.

As we have stated, the single issue is whether this record contains facts (as distinguished from mere averments) which should prevent a court from applying an established rule of law. For the reasons underlying the rule of immunity and the authorities in support, we refer to our main brief. Respondent's argument that an exception must be carved out in the present case consists of nine contentions which we

may briefly consider in turn. It is submitted that none of them alone, or any of them collectively, offer a cogent reason for denying immunity

REPLY TO RESPONDENT'S POINTS I AND II.

Innumerable authorities are cited for the propositions that the filing of a creditor's suit creates an equitable lien upon the defendant's property, which lien is binding upon all transferees and that the doctrine of *lis pendens* applies to all takers *pendente lite.*[2] Petitioner does not deny, nor need we discuss, the validity of either of these propositions. Petitioner submits that neither of them is involved in a consideration of the question whether the rule of immunity is to be applied. Whether such an equitable lien existed, whether Lamb received his fees subject to it, whether he must return them—all depend upon the proof of the allegations of the bill, which have not been proved, or admitted.[3] Moreover, Lamb was expressly not bound by the consent decree in the creditor's suit.

Respondent vaguely contends that immunity must be denied because the property received by Lamb was *in gremio legis.* But this again assumes that all the allegations of the two bills are true. There is no *evidence* that the moneys paid Lamb were ever *in gremio legis.* Clearly, such property could not be *in*

[2] Of course, under the law of Mississippi, as Respondent himself points out (p. 13), the doctrine of *lis pendens* has nothing to do with the possible equitable lien created by filing a creditor's bill. See *Fernwood Lumber Co. v. Meehan-Rounds Lumber Co.*, 85 Miss. 54, cited on p. 13 of Respondents' brief.

[3] Indeed, there is considerable doubt whether, because of defects in the original creditor's bill, any equitable lien could have arisen, and thus the bill itself probably fails to state a cause of action. See Petitioner's Reply Brief in No. 432, pp. 13-15. This of course is immaterial in determining whether immunity from service exists.

gremio legis unless it was at least subject to an equitable lien. Even if the allegations and conclusions of the present bill were admitted to be true, they were insufficient to establish an equitable lien. For under the law of Mississippi the filing of a creditor's bill does not create an equitable lien unless the property upon which it is to exist is specifically described in the bill. As we have pointed out, the original creditor's bill not only failed specifically to describe the property of Mrs. Holland, but admitted that much of it was unknown. Moreover, such equitable lien is established only when the suit is brought to a successful conclusion and only against parties bound by the decree. Lamb was expressly not bound by the consent decree in the creditor's suit. Thus even had there been a sufficient description to warrant an equitable lien, such lien has never been established as against Lamb.

REPLY TO RESPONDENT'S POINTS III AND IV.

Respondent insists that the present suit is ancillary or "auxiliary" to the original creditor's suit. The term can be applied to a good many different kinds of proceedings. In the present case all that it means is that a Receiver appointed in suit No. 129 is suing to collect a chose in action—one of the assets of his estate. This bare fact—that it is a Receiver that is plaintiff—should not cause all rules as to service of process to be dispensed with. See *Pacific Railroad v. Missouri Pacific Railway Company*, 3 Fed. 772; and see our main brief, page 9.

Respondent discusses the cases cited by the District Court on the proposition that although for purposes of federal jurisdiction the present suit is an-

cillary, it is independent in the sense that the defendant must be brought before the court in regular fashion, and consequently the rule of immunity is fully applicable. There is little point in again digesting these cases, and we refer to our main brief (p. 9), and to the opinion of the District Court. (R. 159) It should be noted, however, that Respondent's contention is in effect an argument that merely because it is a Receiver that is plaintiff, a court, by an *ipse dixit*, automatically acquires jurisdiction over any new parties, resident or non-resident.

REPLY TO RESPONDENT'S POINT V.

Respondent again cites innumerable cases concerning the conflicting jurisdiction of state and federal courts, mainly in receivership cases, in an apparent endeavor to show that Lamb having taken property in the constructive possession, "*in gremio legis*," of a court in Mississippi, that court, rather than any other court, should determine the present controversy, and that therefore all established rules of immunity should be abandoned.

There is no need to discuss these authorities, for Respondent's argument does not rest upon the record. As we have shown (Points I and II), the existence of an equitable lien depends upon the Respondent being successful in the present suit. As we have likewise shown, Respondent's contention that there was an equitable lien is predicated upon the false assumption that Lamb by his motion to quash the *service* admitted the truth of the allegations in the bill, or that he was bound by the consent decree. Moreover, even assuming that an equitable lien did exist, this does not mean that the property was in the *possession*

of the court, in the same sense as property held by a Receiver. The Receiver in the creditor's suit here was not appointed until long after the payments to Lamb had been made. The question in the present case is whether immunity must be denied, and Petitioner submits that on this record, the considerations determining the retention or surrender of property by courts of concurrent jurisdiction are wholly irrelevant.

Further it is not true that there is an imperative requirement that the court appointing a receiver should handle all litigation the receiver may inaugurate. A receiver frequently sues in a court other than the one appointing him. In fact by the very order appointing Mr. Schmitt a receiver in cause 129 he was "invested with full power and authority to institute and/or prosecute *in any Court* of proper jurisdiction at law or in equity any suit," etc. (R. p. 92).

REPLY TO RESPONDENT'S POINT VI.

In this section Respondent cites the cases supporting the general rule of immunity but argues "that the claim of privilege is entirely dependent upon the circumstances surrounding the litigation." We agree that when the circumstances are such as to enable a party to invoke the well established rule, he may do so. The mere statement of the rule does not aid Respondent in his endeavor to show that the present record presents circumstances which should make the rule inapplicable.

REPLY TO RESPONDENT'S POINT VII.

Respondent's contention in this portion of his brief appears to be that the rule of immunity, the social

desirability of which he fully concedes, should not be applicable (1) where property in possession of the court, *"in gremio legis"*, is involved in the suit, and (2) where the defendant is an attorney.

1. As to the first of these, it is of course predicated upon his earlier argument that Lamb took property subject to an equitable lien. As we have shown, this argument rests upon the assumption that the facts alleged in the various bills were admitted. This is not the fact on the present record. On the contrary, as we have shown the determination of whether or not such lien existed is the very object of the present suit.

2. As to the second branch of Respondent's contention, that an attorney for a party "by his very presence in court * * * has submitted himself to the jurisdiction" (Brief, p. 26), we can say only that if this were true, there would be no rule of immunity. An attorney is not, as Respondent insists, the "alter ego of the client" or "in fact a privy or practical party to the suit" (Brief, p. 26) in every case in which he appears. The mere statement of the argument is sufficient answer. Moreover, Lamb, when served, was in the jurisdiction not only as an attorney but also as party defendant in the contempt proceeding, and as a party his immunity is unquestioned.

Respondent has cited a number of cases to "illustrate the idea" advanced. Two of these, *Nichols v. Horton*, 14 Fed. 327, and *Iron Dyke Copper Mining Co. v. Iron Dyke Railroad Co.*, 132 Fed. 208, were early federal cases decided long before *Page v. Macdonald*, 261 U. S. 446, established the rule of immunity for the federal courts. Moreover, in the *Iron Dyke* case, the defendants had voluntarily come into the jurisdiction as *plaintiffs* to bring suit as part of a

general conspiracy. In the present case, Lamb was in the jurisdiction as a party defendant and as attorney for a party defendant. See *Read v. Neff*, 207 Fed. 890. In each of the state cases cited, the party claiming immunity had likewise voluntarily come into the jurisdiction for the purpose of suing a resident. Moreover, in some of these states, the general rule of immunity is not recognized. In *First National Bank v. Di Martino*, 180 App. Div. 250, 168 N. Y. Supp. 310, cited by Respondent, the asserted immunity was granted.

REPLY TO RESPONDENT'S POINT VIII.

Respondent attempts, in some fashion not clear to Petitioner, to argue that the claimed immunity should have been asserted "by special plea" rather than by a special appearance and motion to quash. Whatever this contention may be, it appears to be conclusively answered by the very case of *Meisukas v. Greenough Red Ash Coal Co.*, 244 U. S. 54, which Respondent cites, and in which this Court squarely held that the proper mode of attacking service of process was by a motion to quash. See also *Pine Hill Coal Co. v. Gusicki*, 261 Fed. 974; *Joseph Frackman Co. v. Lloyd's London, Inc.*, 7 Fed. (2nd) 620; *Creager v. P. F. Collier & Son Co.*, 36 Fed. (2nd) 781; *Hurley v. Wells-Newton National Corp.*, 49 Fed. (2nd) 914, 918.

Finally, Respondent concludes with a reiteration of the confused and mistaken assumptions made at the outset. He states variously: (1) that there was before the court "the decree showing the holding of the court that the money was trust funds." (Page 32) There was no such decree binding on Lamb. (2)

That "the facts were all admitted." But as we have shown this could not mean that the allegations of the bill, the ultimate question in the present suit, were admitted by the motion to quash. That this assumption underlies all of Respondent's arguments, appears from his summary, which, although quite contradictory in itself, we think should be quoted:

> "* * * *On the motion to quash, the facts stated in the pleadings would,* under ordinary circumstances, *be taken as true,* but this assumption was not necessary in this case since *the facts themselves were in evidence* before the lower court and it was only necessary that it should say whether the rule of personal privilege of an attorney or party under process attending court was inflexible to such an extent that if while acting as attorney *and attending court, he should, pendente lite, take a portion of the subject matter of the litigation, the parties to the cause must be referred to the court of the residence of such attorney.*" (Brief, p. 33)

REPLY TO RESPONDENT'S POINT IX.

Respondent here attempts to explain *Page v. Macdonald, supra.* In that case this Court held that, on a motion to quash, the allegations of the complaint could not be taken as true for the purpose of destroying the immunity of a non-resident. Respondent tries to explain that decision by saying:

> "We suggest that it was meant by that statement that on a motion to quash sufficient evidence should be introduced before the Court to show that there was a serious question of fact involved which would, if true, in effect destroy the claim to privilege." (Brief, p. 34)

This explanation of *Page v. Macdonald* is derived entirely from the imagination of the Respondent. There is nothing in the case itself to justify it. Nor does Respondent point out in what respect the "evidence" in the present case is any more ample than it was in *Page v. Macdonald*.

In conclusion, Petitioner submits that the instant case, stripped of its surplusage, presents merely a suit for the return of money, founded upon the alleged existence of an equitable lien, brought against a non-resident defendant upon whom service was made while he was within the jurisdiction attending court both as an attorney and a party defendant in other causes. Upon a proper motion, the District Court quashed such service in accordance with the rule established by this Court. Such action was eminently proper, and the decision of the Circuit Court of Appeals reversing the order was erroneous.

Respectfully submitted,

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Counsel for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

NO. 433

WILLIAM E. LAMB, Petitioner

vs.

WILLIAM A. SCHMITT, RECEIVER, Respondent

STATEMENT OF FACTS AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

GREEN, GREEN & JACKSON,
ROBERSON & COOK,
MAYNARD, FITZGERALD & VENABLE,
of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

NO. 433

WILLIAM E. LAMB, Petitioner

vs.

WILLIAM A. SCHMITT, RECEIVER, Respondent

STATEMENT OF FACTS AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

This cause, No. 433 on the docket of this court, is a companion case to No. 432 on the same docket, and reference to No. 432, its records, briefs, and proceedings, is here made for a fuller understanding hereof.

The opinion of the district court is reported in 43 Fed. (2nd) 770, (Rec. 156).

The opinion of the Circuit Court of Appeals for the Fifth Circuit was rendered on April 9, 1931, and is reported in 48 Fed. (2nd), 533. (Rec. 169).

I

JURISDICTION

The right of the petitioner to writ of certiorari from this court to review the decision of the Circuit Court of Appeals below is respectfully challenged on the following grounds:

1. The decision of the court below is not a final decision.

2. There is no special or important reason for the granting of the writ of certiorari asked for herein.

3. The writ of certiorari asked for here is not one to review a decision of the Circuit Court of Appeals, (a) where said decision is in conflict with the decision of another Circuit Court of Appeals on the same matter; or (b) where it has decided an important question of local law in a way probably in conflict with applicable local decisions; or (c) where it has decided an important question of general law in a way probably untenable or in conflict with the weight of authority; or (d) where it has decided an important question of federal law which has not been, but should be, settled by this court; or (e) where it has decided a federal question in a way probably in conflict with applicable decisions of this court; or (f) where it has so far departed from the accepted and usual course of judicial proceeding, or so far sanctioned such a departure by a lower court as to call for an exercise of this court's power of supervision.

4. The writ of certiorari asked for herein is not one which will be granted under the terms of Section 347, Title 28, U. S. Code.

II.

STATEMENT OF FACTS

The original bill, (Rec. Pg. 1) in this cause being No. 162 in Equity in the district court below, was filed as a bill, ancillary to cause No. 129 in Equity, in the same court. (See original bill No. 129 in Equity. Rec. Pg. 7-64, and supplemental bill therein. (Rec. 64-78).

The original bill in Cause No. 129 and supplemental bill therein just cited, sought to set aside alleged fraudulent conveyances, and plaintiffs claimed a lien by virtue of the state statute and the rule in equity cases in federal courts, on all the funds involved and described in the original bill, No. 129.

During the trial of the original case in equity, No. 129, in the lower court, it was discovered that petitioner, who was at that time attorney for the defendants in said cause No. 129, had, since the filing of the suit and during the pendency thereof, and with full knowledge of the equities, taken out of the corpus of the estate on which a lien was claimed, approximately $90,000.00 of the funds. Thereupon the plaintiffs in said original cause No. 129 in Equity, filed an ancillary petition in Cause No. 129 (Rec. 99-104) seeking summary action as against petitioner here (a) for a turn over and to set aside such additional fraudulent conveyances; (b) as for contempt; (c) to enjoin further additional transfers. An order was entered (Rec. 104) making petitioner a party to cause No. 129 and ordering service thereof on petitioner as (a) rule to show cause as for contempt; (b) rule to show cause for a turn over; (c) giving notice of a temporary restraining order. Petitioner answered the ancillary petition in cause No. 129 (Rec. 116) in all of its prayers and prayed for complete exoneration. (Rec. 136).

A decree was entered in the original cause No. 129 (Rec. 78-94) which decree reserved to the district court (Rec. 81):

"Full jurisdiction of this cause to make such other and further orders as it may deem proper, and as equity may require, both as to increasing the amount of the estate, and/or increasing the amount due and owing to any party plaintiff, and/or uncovering additional property and disposing of any adverse claims that may be interposed as against any portion of said estate." And further: (Rec. 86)

"This court reserves full jurisdiction of the cause to make any other and further orders which may be, from time to time, essential for the creation, preservation, and/or disposition of the relative rights of the several parties hereto; or any claimant of any portion of the estate, now or hereafter created."

It will be seen that the petitioner was then a party to the cause No. 129 when decree was entered April 30, 1930 (Rec. 94). By the terms of said decree a receiver was appointed (Rec. 80) and the "said receiver" given the rights as follows: (Rec. 92):

"Said receiver is hereby invested with full power and authority to institute and/or prosecute in any court of proper jurisdiction, at law or in equity, any suit or proceedings against any and all persons whomsoever seeking to recover posession and/or control and/or damages in connection with the rights hereby vested in him."

Thereupon the receiver filed the original bill here, (Rec. Pg. 1) as an ancillary bill to cause No. 129. This being done, as we believe, as a precautionary measure and, to strengthen, if such was needed, the ancillary petition already filed in cause No. 129 (Rec. 99) as above cited. Subpoena was thereupon issued (Rec. 94) and served on the petitioner and returned. Whereupon the petitioner came into court and moved (Rec. 96) "to quash the attempted service of process on him." The said motion (Rec. 96-99) was composed of five paragraphs, but

set up the sole ground for the motion to quash as being that the petitioner when served was a non-resident attorney attending court in a foreign jurisdiction, and, therefore, exempt from service of any such writ. The motion came on to be heard before the district court and after hearing the evidence showing the surrounding facts and circumstances, the district court, by final decree, (Rec. 155) quashed the service of process. The opinion of the district judge appears at pages 156-160 of the Record. Thereupon an appeal was taken by the receiver to the Circuit Court of Appeals for the Fifth Circuit where the district court was reversed (Rec. 176) and Judge Dawkins delivered the opinion of the court, which is found at Pages 169-175 of the Record. The sole question of appeal was whether or not petitioner Lamb, who was admittedly a non-resident attorney attending court in a foreign jurisdiction, was subjest to service of such a writ.

III

REASONS RELIED UPON IN OPPOSITION TO THE ISSUANCE OF THE WRIT

Upon reading the statement of facts herein involved, as set forth in II, **supra**, it will be seen that the reasons relied upon for the allowance of the writ, as set forth under subdivision B of the petition for the writ in Paragraphs 1, 2, 3 and 4 thereof, are not good and valid reasons for the issuance of the writ:

1. Because the decision of the Circuit Court of Appeals of the Fifth Circuit is not in conflict with the decision of this court in the following cases cited by petitioner, namely:

Page Co vs. McDonald, 261 U. S. 446.

Stewart vs. Ramsey, 242 U. S. 128.

Nor is it in conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit cited by counsel, namely:

Durst vs. Tautges, Et Al, 44 Fed. (2nd) 507.

2. While it is true that unless the court issues its writ of certiorari at this time, petitioner will be required to stand trial in the district court below, nevertheless he will not be finally deprived of any immunity since the decision of the Circuit Court of Appeals in this cause is not a final decision as to petitioner and petitioner yet has the right (a) to stand trial in the district court; (b) to appeal to the Circuit Court of Appeals; (c) thence to this court on writ of certiorari.

3. Any error on the part of the Circuit Court of Appeals for the Fifth Circuit, as set forth in Paragraph 3, subdivision B of the petition is not in conflict with the decision of this court and other circuits, nor is such error in a final judgment or decree in said Circuit Court of Appeals from which a writ of certiorari should be allowed.

4. Writs of certiorari are not allowed from this court to the Circuit Court of Appeals in order to review an error therein, as set forth in Paragraph 4, subdivision B of the petition for the writ.

Taking these reasons up seriatim, and identifying them alphabetically to distinguish them from the numerical arrangement in the petition, we say:

(a) The case of Page Co. vs. McDonald, supra, was a writ of error to the District Court of the United States for the District of Massachusetts to review a judgment of that court abating an action brought to recover damages for the alleged publication of a libel. Mrs. McDonald had filed a suit,

in the state superior court of Massachusetts against the Page Co., and the complainant in her suit had made allegations which the Page Co., alleged were libelous. Thereupon the Page Co., in the District Court of the United States for the District of Massachusetts sued Mrs. McDonald for libel, and service was made upon her while in the district in attendance before a special master appointed by the superior court of Massachusetts to hear the evidence. She pleaded in abatement of the action that she was immune from service. The district court held that she was immune. This judgment was affirmed by the Supreme Court of the United States and the immunity granted was founded on the rule announced theretofore by the Supreme Court of the United States in **Stewart vs. Ramsey, 242 U. S. 128**, as follows:

> "It is founded, in the necessities of the judicial administration, and the courts, federal and state, have equal interest in those necessities. They are both instruments of judicial administration within the same territory available to suitors, fully available, neither they nor all their witnesses subject to be embarrassed or vexed while attending, the one for the protection of his rights, the others while attending to testify."

And further:

> "It is 'the privilege of the court' we have seen, rather than his. 'It is founded in the necessities of the judicial administration'."

Page Co. vs. McDonald, 261 U. S. 448.

It will, therefore, be seen that the decision of the Circuit Court of Appeals in this instance does not come in conflict in any way with the **Page Co. vs. McDonald** case.

The case of **Stewart vs. Ramsey, supra**, cited by counsel, was a case where Stewart brought an action at law

against Ramsey in the United States District Court for the Northern District of Illinois where summons was served on him personally. Ramsey pleaded in abatement that he was a resident of the State of Colorado. While in attendance upon the district court as a witness in the case where he was plaintiff, and that the process was served while he was returning from the court room after testifying. There was no question in the case as to summary remedy or as to any part of the corpus of the property before the court in the original case having been disturbed. The district court ruled that the defendant was immune, and the Supreme Court of the United States affirmed the judgment but notice that the affirmation was upon the grounds as follows:

> "The privilege which is asserted here is the privilege of the court, rather than the defendant. It is founded in the necessities of the judicial administration, which would be often embarrassed and sometimes interrupted if the suitor might be vexed with process while attending upon the court for the protection of his rights, and the witness while attending to testify. Witness would be chary of coming within our jurisdiction, and would be exposed to dangerous influences if they might be punished with a law suit for displeasing parties by their testimony; and even parties in interest, whether in the court or not, might be deterred from the rightfully, fearless assertion of a claim, or the rightfully, fearless assertion of a defense, if they are liable to be visited on the instant with litigation from the defeated party."

It will be seen from the above quotation that both the **Page Co** case and the **Stewart vs. Ramsey** case granted immunity to the defendant not because of any individual right of his, but because of the "necessities of the judicial administration."

The case of **Durst vs. Tautges et al, supra**, which was a case decided by the Circuit Court of Appeals for

the Seventh Circuit, was a case wherein Robt. McDonald, a member of the law firm, Tautges, Wilde and McDonald, had come into the State of Wisconsin for the purpose of taking depositions in a certain cause pending in the state courts of Minnesota, was served with injunctional order, and three separate actions commenced that day in the Circuit Court of Milwaukee, Wisconsin. McDonald, on behalf of his firm, moved to vacate the summons and the cause was removed upon petition to the District Court of the United States where the district court sustained the motion to vacate the service of the summons. The Circuit Court of Appeals in affirming this judgment held that the privilege was not a personal privilege, but a privilege of the court:

> "It is not simply a personal privilege, but it is also the privilege of the court, and is deemed necessary for the maintenance of its authoriay and in order to promote the due and efficient administration of justice."

Judge Dawkins, of the Circuit Court of Appeals, in his opinion (Rec. 169-175) had before him all of these decisions in the briefs of counsel, and in the last paragraph of his opinion distinguished the position of the petitioner in this case and his plea of immunity from the immunity granted in the other cases mentioned, in these words:

> "This immunity is more for the protection of the court itself, and to prevent interference with its proceedings than for the benefit of the attorneys."
>
> **Stewart vs. Ramsey, 242, U. S. 128.**
>
> "To allow and to defeat proper proceedings for the control of such property would be to destroy the very basis of the rule itself, i. e. the orderly functioning of the court."

The Circuit Court of Appeals had presented to it two rules of law; first, the well established rule of law:

"The court which first acquires the lawful jurisdiction of specific property by seizure thereof, or by the due commencing of a suit from which it appears that it is, or will become, necessary to a determination of the controversy involved, or in the inforcement of its judgment or decree therein, for the court to seize, to charge with a lien, or to exercise other like dominion over it, thereby withdraws that property from the jurisdiction of every other court so far as is necessary to accomplish the purpose of the suit, and entitles that court to retain the control of it requisite to effectuate its final judgment or decree therein, free from the interference of every other tribunal."

Long vs. Choctaw Oklahoma Co., 160 Fed. 355 (C. C. A. 8).

Illinois Steel Co. vs. Putnam, 68 Fed. 517 (C. C. A. 5)

Adams vs. Mercantile Trust Co., 66 Fed. 620 (C. C. A. 5) Corpus Juris, Vol. 34, Pg. 200.

Second, the well established rule of law:

"That a suitor, or witness, or attorney is exempt from service of process while without the jurisdiction of his residence for the purpose of attending court in an action to which he is a party, or in which he is to be sworn as a witness."

Page Co. vs. McDonald, 261 U. S. 446

Stewart vs. Ramsey, 242 U. S. 128

Durst vs. Tautges et al, 44 Fed. (2nd) 507.

These are two rules not necessarily conflicting and since both are rules established by all the decisions not for the protection of the individual, but for the pro-

tection of "the judicial necessities" they should never be allowed to conflict.

The decision of the Circuit Court of Appeals in this case, which held that where the two rules come in conflict in the same court the first rule quoted should be inforced to the exclusion of the second rule "because of the judicial necessities," which is not in conflict either with justice, equity, or the rules of decision established in this, or any other court.

On the motion to quash the service of process the allegations of the pleading are taken as true, and the evidence of the surrounding circumstances which were taken on the motion to quash were undisputed. Therefore the district court below as well as the Circuit Court of Appeals below had only the choice of enforcing one of the two important rules of law above set forth, both of which rules were a growth of decisions founded upon "judicial necessity," and to protect the jurisdiction of the courts. One rule to the effect that a "person" whether party, witness, or attorney, attending court proceedings must not be allowed to be withdrawn from the jurisdiction of the court. The other, that "property" likewise, in a sense, attending court must not be allowed to be withdrawn from such attendance. Both rules are flexible and are not conflicting when viewed from the basic reasonings upon which they are founded, and that one of the rules must prevail which best conserves the "judicial necessity," and best preserves the "jurisdiction of the court."

If the rule of exemption from service of non-resident parties, witnesses and attorneys attending court in a foreign jurisdiction was inflexible, we would be faced with the anomalous spectacle of each suitor in every case where claimed property was within the jurisdiction of the court, and in process of being seized thereby, hiring a non-resident attorney and handing such property over to him, thereby forcing the court to release jurisdiction thereof, and forcing the original complainant in the

case to go out of his local jurisdiction to the place of residence of the foreign attorney to settle the question of the validity of the transfer of property already constructively in the possession of the lower court.

Such a proposition is unthinkable, and a statement of it is its own refutation.

(b) If this writ of certiorari is not granted it is true that the petitioner will be required to stand trial in the district court on the merits, but he will not be deprived of his immuniy since he has still the remedy of an appeal from the district to the Circuit Court of Appeals, and by writ of certiorari thence to this court.

(c) The decision of the Circuit Court of Appeals below was from a judgment or decree of the district court rendered upon the hearing of all the evidence for the purpose of showing the surrounding circumstances, and there was no error on the part of the Circuit Court of Appeals to determine the issue on petitioner's immunity from service of process upon the consideration of the nature and merits of the surrounding circumstances upon which his immunity vel non was based.

(d) There was no error in the decision of the Circuit Court of Appeals herein, but if so, this court will not review the same on the writ of certiorari as here requested.

BRIEF AND ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI

The writ of certiorari is asked here under and by virtue of **Section 347, Title 28, U. S. Code.** This section was **Judicial Code, Section 240,** amended February 13, 1925, to read as at present. Under Section 240 of the Judicial Code prior to the amendment of February 13, 1925, it was consistently held by this court:

1. That the jurisdiction to issue certiorari will be exercised sparingly and only in cases of peculiar gravity and general importance:

Lau Ow Bew, 141 U. S. 583

Lau Ow Bew vs. U. S., 144 U. S. 47

American Construction Company vs. Jacksonville Railroad Company, 148 U. S. 372

Forsyth vs. Hammond, 166 U. S. 506

Hamilton Brown Shoe Co., vs. Wolf, 240 U. S. 251

Houston Oil Co., vs. Goodrich 245 U. S. 440.

We judge from the remarks of Mr. Justice McReynolds in the case of **Furness-Withy vs. Yang-Tsze Ins. Asso.**, that under the statute as it then stood (Oct. 1916) hundreds of additional cases were being taken to the Supreme Court by certiorari, and that, therefore, it was necessary to give them the closest attention and to allow the writ only when absolutely necessary.

Furness-Withy & Co. vs. Yang-Tsze Ins. Asso., 242 U. S. 430.

In fact it has been held that certiorari will not be granted where there is any other remedy, and since in the present case this petitioner has the remedy of going back to the district court and having his case tried on the merits and then appealing to the Circuit Court of Appeals before asking for the writ of certiorari, his remedy is plain and adequate.

In re Tampa Suburban R. R. Co., 168 U. S. 583.

In re Huguley Mfg. Co., 184 U. S. 297.

This court has consistently held that while the writ of certiorari is discretionary it is only granted upon extraordinary reasons and is often denied when the power to issue is unquestioned.

Hyde vs. Shine, 199 U. S. 62

Re Hitz 111, U. S. 166

American Const. Co. vs. Jacksonville, Etc., Co., 148 U. S. 372.

Mr. Chief Justice Taft said in the case of **Magnum Import Company vs. Coty:**

> "The question how the court should exercise this power next arises. The jurisdiction to bring up cases by certiorari from the Circuit Court of Appeals was given for two purposes; first, to secure uniformity of decisions between those courts in the nine circuits, and, second, to bring up cases involving questions of importance which it is to the public interest to have decided by this court of last resort. The jurisdiction was not conferred on this court merely to give the defeated party in the Circuit Court of Appeals another hearing. Our experience shows that 80 per cent of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ."

Magnum Import Co., vs. Coty, 262 U. S. 159.

The true rule is that even though the writ be granted to the Circuit Court of Appeals such cases will not be reversed on certiorari unless it amounts to a miscarriage of justice.

2. Justice Taft held that this court would not entertain requests for certiorari of an ordinary patent case unless it be necessary to reconcile decisions of the Circuit Court of Appeals on the same patent.

The petitioner herein seems to think that this court will issue the writ of certiorari to review the Circuit Court of Appeals decision because in the opinion of petitioner that decision conflicts in principle with certain decisions of circuit courts of appeals in other cases not related to the present. We do not understand this to be the rule.

Mr. Chief Justice Taft said in the **Keller vs. Adams** case, **supra:**

> "Such an ordinary patent case, with its issues of inventions, breadth of claims, and non-infringement, this court will not bring here by certiorari unless it be necessary to reconcile decisions of the Circuit Court of Appeals on the same patent. We, therefore, find ourselves mistaken in assuming that an important issue of general patent law, under Section 4916, Rev. Stat. (Comp. Stat. Sec. 9461, 7 Fed Stat. Anno. 2nd, Ed. P. 211) is here involved. The result is that an order must be entered dismissing the writ of certiorari as improvidently granted at the cost of the petitioner. Layne & B. Corp. vs. Western Well Works, 261 U. S. 387, 67 L. Ed. 712, 43 Sup. Ct. Rep. 422; Furness W. & Co. vs. Yang-Tsze Ins. Asso., 242 U. S. 430, 61 L. Ed. 409, 37 Sup. Ct. Rep. 141; United States vs. Rimer, 220 U. S. 547, 55 L. Ed. 578, 31 Sup. Ct., Rep. 596; Keller vs. Adams, 264 U. S. 314."

3. If upon examination of such a case there is no real conflict of such decision the petition will be dismissed.

Layne & B. Corporation vs. Western Well Works, Inc., 261 U. S. 387.

In the **Layne & Bowler** case, **supra**, the Chief Justice also remarked that since there was no conflict in the deci-

sions of the Circuit Courts of Appeals on the same patent, the writ of certiorari in that case would be dismissed stating:

> "If it be suggested that as much effort and time as we have given to the consideration of the alleged conflict would have enabled us to dispose of the case before us on its merits, the answer is that it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of **importance to the public** as distinguished from **that of the parties** and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal. The present case certainly comes under neither head."

4. Certiorari will not be granted where there is any other remedy.

In Re Tampa Sub. R. R. Co., 168 U. S. 583.

5. That the judgment of the Circuit Court of Appeals of which certiorari is asked must be final.

Geo. A. Fuller Co. vs. Otis Elevator Co. 245 U. S. 489.

In the **Fuller** case, **supra,** Mr. Justice Holmes delivered the opinion in the case and held:

> "It is objected to the writ of certiorari in this case that there was no final judgment; but the writ when issued to the court of appeals is not limited to cases in which final judgment has been entered, but only to cases in which the judgment when entered is final."

Of course, the judgment from which the writ of certiorari was asked in the **Fuller** case was under **Judicial Code 251** which has now been repealed but the words quoted by Justice Holmes as follows:

"With the same power and authority in the case as if it had been carried by writ of error on appeal to said Supreme Court."

which are still substantially a part of **Sec. 347, Title 28, U. S. Code** under which the present writ of certiorari is requested as follows:

"With like effect as if the cause had been brought there by unrestricted writ of error or appeal."

We take it that the last quoted words in **Section 347, Title 28, U. S. Code,** mean just what Justice Holmes said, namely, that while the power is given to issue a writ of certiorari, to Circuit Court of Appeals directing it to send up the record in a case, either before or after a judgment or decree by such lower court, but that when the record is sent up after a judgment granted by the Circuit Court of Appeals it must be on one which was final.

Denver vs. New York Trust Co., 229, U. S. 123.

6. That the passage of **Section 347 Title 28, U. S. Code An.,** which is the amendment of **Section 240, Judicial Code** by act February 13, 1925, 43 **Statutes at Large 938,** did not change the grounds or causes for the issuance of writs of certiorari, or make writs of certiorari procurable under any less extraordinary circumstances is evident from the fact that this court in the revision of its rules adopted June 5, 1928, effective July 1, 1928, more than three years after the amendment of February 13, 1925, aforesaid, did not change that part of former Rule 35 contained in Paragraph 5 thereof, which provides that "a review on writ of certiorari is not a matter of right but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." And then continues to give the rules generally used in measuring the court's discretion. (Reference is here made to the rule of this court No. 38).

7. It is recognized, of course, that the Supreme Court of the United States also has the right to issue writ of certiorari in cases not provided for by Section 347, Title 28, U. S. Code, under the provisions of the other Section 377, Title 28, U. S. Code, Anno., but since the latter is rather a provision extraordinary and for the issuance of writs not specifically provided for by statute, we judge that the reasons herein given for not issuing the writ under Section 347, Title 28, U. S. Code, would apply with a greater force to requests to issue the writ under Section 377, Title 28, U. S. Code.

SUMMARY

The petitioner herein has no right to the writ of certiorari (a) because the decision of the court below is not in conflict with either the decision of this court, or any other circuit; (b) because the matters involved are not of general importance; (c) because the decision from which certiorari is asked has been entered by the Fifth Circuit Court of Appeals, and was not a final decision; (d) because the decision in the Circuit Court of Appeals was correct.

It is, therefore, respectfully submitted that the writ of certiorari herein prayed for should be denied.

GERALD FITZGERALD,
Counsel for Respondents.

GREEN, GREEN & JACKSON,
ROBERSON & COOK,
MAYNARD, FITZGERALD & VENABLE,
of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 433

WILLIAM E. LAMB, PETITIONER

vs.

WILLIAM A. SCHMITT, *Receiver*, RESPONDENT.

STATEMENT OF FACTS AND BRIEF FOR RESPONDENT

GERALD FITZGERALD,
Counsel for Respondent

of Counsel:
GARNER W. GREEN,
SAM C. COOK.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1931

No. 433

WILLIAM E. LAMB, Petitioner

vs.

WILLIAM A. SCHMITT, RECEIVER, Respondent

STATEMENT OF FACTS AND BRIEF FOR RESPONDENT

MAY IT PLEASE THE COURT:

This cause, No. 433 on the docket of this court, is a companion case to No. 432 on the same docket, and reference to No. 432, its records, briefs, and proceedings, is here made for a fuller understanding hereof.

The opinion of the district court is reported in 43 Fed. (2nd) 770, (R. Page 156).

The opinion of the Circuit Court of Appeals for the Fifth Circuit was rendered on April 9, 1931, and is reported in 48 Fed. (2nd) 533. (R. Page 169).

STATEMENT OF FACTS

The original bill (R. Page 1) in this cause being No. 162 on the equity docket in the district court below

was filed as an auxiliary or ancillary bill to cause No. 129 in equity in the same court.

Cause No. 129 in equity in the district court (R. Pages 7-64) and supplemental bill (R. Pages 64-78) sought to set aside alleged fraudulent conveyances and plaintiff claimed a lien on the entire estate of the defendant, Florence T. Holland. This lien was finally impressed in cause No. 129 by decree (R. Page 80). During the progress of cause No. 129 in the lower court, a petition was filed in cause No. 129 (R. Pages 99-104) seeking to make petitioner here a party to cause No. 129, and prayed; (a) to set aside conveyance to him pendente lite of part of the funds in litigation; (b) as for contempt; (c) to enjoin further transfers.

An order was entered in cause No. 129 (R. Page 104) making petitioner a party to said cause No. 129 and ordering service thereof on petitioner as (a) rule to show cause as for contempt; (b) rule to show cause why transfer should not be set aside; (c) giving notice of a temporary restraining order. Restraining order was entered by consent in cause No. 129 after service on petitioner of the citation enjoining any further transfers of any part of the estate of Florence T. Holland by her or her attorneys. Petitioner answered the ancillary petition in cause No. 129 (R. Page 116), and prayed for exoneration (R. Page 136.) Before petitioner's answer could be heard a decree was entered in the original cause No. 129 (R. Pages 78-94) which decree reserved to the district court:

> "Full jurisdiction of this cause to make such other and further orders as it may deem proper, and as equity may require, both as to increasing the amount of the estate, and/or increasing the amount due and owing to any party plaintiff, and/or uncovering additional property and disposing of any

adverse claims that may be interposed as against any portion of said estate." (R. Page 81).

"This court reserves full jurisdiction of the cause to make any other and further orders which may be, from time to time, essential for the creation, preservation, and/or disposition of the relative rights of the several parties hereto; or any claimant of any portion of the estate, now or hereafter created." (R. Page 86).

When the above decree was entered in cause No. 129 petitioner was then a party to the cause No. 129.

By the terms of said decree in cause No. 129 a receiver was appointed (respondent here) (R. Page 80) and the said receiver given the following powers and rights:

"Said receiver is hereby invested with full power and authority to institute and/or prosecute in any court of proper jurisdiction, at law or in equity, any suit or proceedings against any and all persons whomsoever seeking to recover possession and/or control and/or damages in connection with the rights hereby vested in him." (R. Page 92).

Thereupon the receiver did not join with the plaintiffs in cause No. 129 in the prosecution of their supplementary petition, but filed this cause No. 162 as an original, ancillary or auxiliary bill to enforce the decree in said cause No. 129.

Subpoena was issued in this cause No. 162 (R. Page 94) and served on the petitioner in the district and properly returned, whereupon the petitioner moved (R. Page 96) "to quash the attempted service of process on him." The said motion came on to be heard before the district court and evidence was introduced before the district

court as hereinafter stated in the argument, and the district court (R. Page 155) quashed the service of process.

The opinion of the district court appears at Pages 156-160 of the Record.

An appeal was taken by the receiver to the Circuit Court of Appeals for the Fifth Circuit where the district court was reversed. (R. Page 176). Judge Dawkins delivered the opinion of the court, which opinion is found at Pages 169-175 of the Record.

The sole question upon the appeal was whether or not petitioner, who was admittedly a non-resident attending court in a foreign jurisdiction, was under the circumstances shown by the evidence subject to service of the writ in this case.

ARGUMENT

The writ of certiorari having already been granted herein the case comes on to be heard upon the errors alleged by the petitioner to have been committed in the Circuit Court of Appeals.

In their brief in support of petition for certiorari at Page 6, under the heading "Specifications of Error" counsel for petitioner say, "The errors intended to be urged are specified under heading B, Paragraphs 3 and 4 in the petition." Turning to paragraphs 3 and 4 under heading B in the petition we find the following errors alleged to have been committed by the Circuit Court of Appeals in this case, to-wit:

> "3. The Circuit Court of Appeals erred in determining the issue of petitioner's immunity from service of process solely upon a consideration of the nature and merits of the causes of action pleaded against him, and not in determining that issue solely

upon a consideration of the reason for his presence in the district at the time the process was served."

"4. The Circuit Court of Appeals erred in reversing the judgment of the district court."

It is the rule that this court will only consider errors specifically assigned, therefore Paragraph No. 3 above is the only error assigned, since Paragraph No. 4 above is merely a broad assertion of error not specific enough to be considered.

By this more or less involved specification of error No. 3, we understand that counsel for petitioner take the position here that the Circuit Court of Appeals should have looked solely to the facts that petitioner at the time of service of process in this case upon him was a non-resident and (a) in attendance upon the court as attorney in cause No. 129; (b) a party to and under process in cause No. 129, and if those facts were true then no other circumstances ought to have been taken into consideration or looked to by the court for the reason, as petitioner contends, the rule of privilege is "absolute and inflexible."

This whole case depends upon and revolves about the question whether a non-resident attending court in a foreign jurisdiction, as a party under process or otherwise, is privileged from service under all circumstances and whether such privilege is "inflexible" and "inviolable."

It is the contention of the respondent that such rule is not "inflexible" and "inviolable" under any and all circumstances but that the rule is one of law established for the protection of the authority of the court over persons and that it is not operative when it comes in conflict with

a like rule of law established for the protection of the authority of the court over property.

The question as to the final liability of the petitioner to pay the money for which he is sued in this case is not in issue here, otherwise the respondents would be compelled to try the case on its merits in this court.

The only question which is at issue before this court is whether or not, under the circumstances of the case, the petitioner can claim the privilege of immunity from service.

This case came before the district court (as cause No. 162 on that docket) only upon the "Motion to Quash Attempted Service of Process." R. Pages 96-99, inclusive). The said motion did not and could not attempt to deny the facts set forth in the original bill, but only alleged under the six grounds of the motion, (1) (R. Page 96) the non-residence of the petitioner at the time of the service of the writ on him; (2) (R. Page 96) that at the time of the service of the writ petitioner was present in the district of service of process (the process being attached as Exhibit. R. Page 104); (3) (Rec. Page 97) that at the time of the service of process upon him petitioner was in the district as a non-resident attorney in attendance upon court; (4) (R. Page 98) that at the time of service of process upon him petitioner was on his way out of the state; (5) (R. Page 98) that petitioner had no business in the state other than his court duties in said case, and to answer said process; (6) (R. Page 98) that except for his duties as counsel and said process he would not have been in the state.

The whole motion, therefore, boiled down to its final meaning simply states that service of process on petitioner should be quashed because of his claimed privilege from such process in this cause (a) as a non-resident attorney attending court in a foreign jurisdiction in

another cause; (b) because he was under process at the time of service of the process in the instant case.

We take the position that the fact that petitioner was under process in another case added nothing to his claimed privilege of an attorney attending court in a foreign jurisdiction in the same case since if the privilege is allowable under the circumstances it is allowable in either or both cases.

Since we admit the truth of the facts set up as grounds to quash the service of process, namely, (a) that the petitioner was a non-resident attorney attending court in a foreign jurisdiction at the time of the service of the writ upon him; (b) that he was also at the time of the service of the writ upon him under process as a party (R. Page 104) we shall not go into the details of the facts supporting his grounds. We shall, however, be compelled to outline to the court the evidence introduced before the district court in this cause upon the hearing of the motion to quash the process so that this court may see exactly what the district court acted upon.

It is shown by the original bill in this cause (No. 162 in the district court; No. 6072 in the C. C. A.) (R. 1-7, inclusive) that at the time of the filing of this cause there was pending in the said district court cause No. 129 in equity, styled "Sterling B. Cramer, Plaintiff, vs. Florence T. Holland, Defendant." Reference is made to that cause No. 129. The bill states that a decree had been rendered in cause No. 129 appointing Schmitt (respondent here) receiver with power to sue; the object and the effect of the equity suit cause 129 was outlined in the bill and the charge made that petitioner, an attorney for the defendant in cause No. 129, with full knowledge of the equities, had taken out of the funds in the hands of the court in cause No. 129 approximately $70,000.00 which were trust funds by virtue of law and of said decree; that other large sums out of the said trust funds had been paid to the

defendant, the exact amount of which was not known. It was prayed that an accounting be had and taken, and general relief was asked. On the hearing of the motion to quash, the following evidence was introduced:

(a) The original bill with exhibits in cause No. 129 (R. Pages 7-64, inclusive) (Filed July 23, 1928);

(b) Supplemental bill and application for receiver. (R. Pages 64-78) (Filed January 8, 1929);

(c) Decree of the court in cause No. 129 (R. Pages 78-94, inclusive);

(d) Petition of the original plaintiffs in cause No. 129 (Rec. Pages 99-194) setting up in that cause the same facts with others that were then before the court by the original bill in this cause No. 162.

(e) The citations issued to the petitioner and others in cause No. 129 (R. Page 104).

(f) The answer of Wm. E. Lamb to the citation above in cause No. 129 (R. Page 116).

(g) The affidavit of Sam C. Cook in opposition to the motion of defendant to quash service of process (R. Page 140).

(h) Affidavit of Jos. F. Ellis (R. Page 145).

(i) Testimony of Gerald FitzGerald (R. Page 148).

(j) Affidavit of Wm. E. Lamb filed on the motion to quash (R. Page 108).

The gist of the above evidence, taken in connection with the pleadings and proceedings in cause No. 129 which were then before the court, was to this effect, namely, that cause No. 129 had been filed in equity in the District Court as a general creditors' bill to set aside alleged fraudulent conveyances between W. P. Holland

and his wife; that from time to time the cause was opened up to admit (1) the Canal Bank and Trust Company, judgment claim of $112,497.42; (2) United States Government claim of income taxes, $600,000.00; (3) various bank creditors set forth on R. Page 79, to the extent of approximately $7,000,000.00. That the original suit was filed in July, 1928, claiming that Holland had transferred his entire estate to his wife and that the said Holland was really carrying on business in the name of his wife and that as her entire estate had been fraudulently transferred to her by him it was a trust fund in her hands for the benefit of the creditors, and a lien was claimed upon the entire estate of Mrs. Holland. That petitioner knew of this and was employed in August after the bill in No. 129 was filed in July, as attorney for Mrs. Holland in said cause No. 129; that the said petitioner took up his residence (not citizenship) for seventeen months at the Holland home in the district in which No. 129 was pending. That while said cause No. 129 was pending and before it had gone to a decree, it was discovered that the defendant, Holland, and others mentioned in the petition for citation (R. Page 99) had been busily engaged in transferring the estate of Mrs. Holland into other hands, in that petitioner had gotten approximately $70,000.00 of the estate; brother-in-law Garner had gotten $100,000.00 worth of bank stock; Bank of Grenada had gotten $40,000.00 in cash, etc.; that in said cause No. 129 a citation had been issued (e, supra) (R. Page 104) to said petitioner and others and that they had been made parties to said cause No. 129, and the said petitioner had answered and submitted himself to the jurisdiction of the court in said cause No. 129 and prayed exoneration (f, supra) (R. Page 116) but that in the meantime, after the citation had been issued, a decree had been rendered in cause No. 129 declaring the estate of Mrs. Holland to be a trust fund and a lien fixed thereon (R. Page 80), and a receiver had been appointed in cause No. 129 with power to sue and that he preferred to sue in a separate suit although ancillary to No. 129;

that the money was admitted to have been received during the progress of the suit (see h, supra) (R. Page 145); (also f, supra) (R. Page 116).

With these facts before the court it was contended by the petitioner that he was privileged from service at the time the writ was served upon him, and it was contended by the respondents that since the money transferred to the said petitioner was at the time of its transfer in the constructive possession of the court and known by petitioner to be a trust fund that no immunity existed; that the district court should, without referring the parties to any other jurisdiction, try out the question of the accounting and the liability of petitioner to return into court the money received by him pendente lite. That the ultimate fact of petitioner's liability was not in issue and could not be decided upon his ex parte affidavit in cause No. 129 (said affidavit being introduced as a part of the evidence in cause No 162) (R. Page 108), the respondents having had no chance to cross examine, or to inquire into the truth or falsity of the averments; that there was sufficient evidence to show a cause of action, and it was a grave question as to his final liability for a part of the funds declared by the court to be trust funds by decree in cause No. 129 in which petitioner was at that time a party as well as an attorney, and that, therefore, the privilege or immunity from service should not be allowed to him.

In this state of the case the district court rendered his opinion. (See R. Pages 156-160, inclusive). In this opinion the district court states, (R. Page 158):

> "The motion to quash should be sustained because the defendant was exempt from the service of civil process upon him while in attendance upon court, and during a reasonable time in coming and going."

(Citing cases hereafter discussed under VI in this brief.)

In the opinion the district court further states (R. Page 159):

> "Conceding the general rule, the receiver urges the court to make an exception to it because of the auxiliary character of this proceeding."

The district court then proceeds to cite cases discussed under IV in this brief to show that while the proceeding in No. 162 is ancillary or auxiliary to No. 129 in one sense, it is original in another, and that the original rules in process and service in cases not ancillary must apply and that, therefore, the service in No. 162 was void. Nowhere in the opinion of the district court is the proposition considered which respondent sought then, and seeks now, to present to the court, to-wit: the question of the waiver of the privilege, or the estoppel of the petitioner to claim the privilege, because of the circumstances in evidence.

It is true that in the opinion (R. Page 158) the district court says:

> "There is no allegation of any misconduct **in this state** by the defendant, and no fact averred to overcome the **inference** that the alleged fees were received by him (petitioner) before he came here." (Italics ours.)

Thus the district court infers that although the subject matter of the litigation was in the district, yet if the petitioner was out of the state at the time he got the subject matter which originated in the state the situation would be changed. With due deference to the learned district judge, we except to this part of his opinion because (1) it could make no difference whether the petitioner was in or out of the district when he received the alleged trust funds if he had knowledge of the equities; (2) it was not necessary to prove that petitioner had been

guilty of any misconduct in the state. It is admitted that he got the money and that the the money was in the state and under the possession of the court at the time he got it, and that the court decreed that such funds were a part of the trust funds and declared a lien thereon from the filing of the bill and service in No. 129 (See final decree, R. Page 80). Whether petitioner got the money in the state or out of it, he got it with full knowledge of the equities, and was a taker pendente lite (See discussion in this brief under I-II), and if he was in the district at the time service was had upon him in No. 162, he was answerable therefor; (3) There was no inference to overcome in the trial of this motion to quash. The only proof offered by petitioner was his motion to quash and exhibits and affidavit (R. Pages 96-113, inclusive), and there is not one single sentence in either of these pleadings which attempts to deny the allegations of the bill in No. 162, or which attempts to extenuate the taking of the money, or which alleges that the money was received out of the state. On the contrary the evidence introduced on behalf of respondent showed that the petitioner had been continuously in the state or district for seventeen months. (See R. Page 149) The dates that he had received the money showed that it was received during that time (See affidavit Ellis, R. Pages 145-147), and that said funds were drawn from the bank in the district. This was shown by petitioner's own pleading, cause No. 129 where he appeared and attempted to exonerate himself (See R. Pages 116-136), (which pleading was introduced in evidence in cause No. 162). The petitioner in that pleading sets forth under paragraph XI (R. Page 125), how, when and where the money was paid, and upon what account it was received. Whether it was received in the manner and for the account as stated is a question to be tried upon the merits and not upon the motion to quash.

If as a matter of fact and of law the petitioner is not liable for the funds received by him pendente lite

in cause No. 129, of course he should not be held liable, but that question can be decided by no other court than the court from whose hands the funds were taken.

LEGAL ARGUMENT AND CITATION OF AUTHORITIES

I.

THE FILING OF THE CREDITORS BILL IN CAUSE NO. 129 CREATED AN EQUITABLE LEVY ON THE ENTIRE ESTATE OF FLORENCE T. HOLLAND AND THE FUNDS TAKEN BY PETITIONER, WITH FULL, ACTUAL KNOWLEDGE THEREOF, WERE AT THE TIME OF TAKING IN GREMIO LEGIS.

Section 328, Hemingway's Miss. Code of 1927.

From which we quote:

> "The creditor in such case shall have lien upon all the property described therein from the filing of his bill, except as against bona fide purchasers, before the service of process upon the defendant in such bill."

It is not necessary under the Mississippi law that any notice should be placed on the lis pendens docket.

> "The lien prescribed by Section 328, Code of 1927, Hemingway's Code, is not governed by lis pendens statute. Such a lien is given from the filing of the bill without further entry on any docket."

Lumber Co. v. Lumber Co., 85 Miss. 54.

Yates v. Council, 137 Miss. 381.

> "Upon filing a bill in equity to set aside a fraudulent conveyance, a lien is created on the prop-

erty, if properly described, regardless of the statute and actual notice of the lien is not necessary."

Miller v. Sherry, 69 U. S. 249.

"The lien will prevail as aginst a purchaser for value pending the suit."

Evans v. Welch, 63 Ala. 250.

Dillard & Coffin v. Smith, 59 S. W. 1010

27 C. J. Sec. 860.

Friedman v. Earle, 110 U. S. 710.

Metcalf Bros. v. Barker, 187 U. S. 171.

U. S. v. Pierce Oil Co., 254 U. S. 397.

"We have already seen that the filing of the bill by an execution creditor to subject the equity of the debtor in his life time created a lien and gave him a legal preference."

Marsell v. Bank, 91 U. S. 357.

In the above case, at Page 361, Justice Swain says:

"The judgment in no wise affected the trust premises until the bill was filed. That created a lien in favor of the judgment creditors. There was none before."

Ex Parte Boyd, 105 U. S. 647.

II.

DOCTRINE OF LIS PENDENS AS APPLIED TO TAKER PENDENTE LITE WITH NOTICE OF EQUITIES.

While under the statutes and decisions lis pendens notice is not necessary to bind a purchaser or taker for value and without notice, yet the petitioner, since he was

an attorney in the case, had actual notice of all the facts alleged in the original bill in cause No. 129.

Actual Knowledge Compared and Distinguished, 46 C. J. 542-43-44-45.

"A party to a transaction whose rights are liable to be injuriously affected by notice cannot willfully shut his eyes to the means of knowledge which he knows are at hand, as knowledge of such facts and circumstances as are sufficient to put a party upon inquiry, and to show that if he had exercised due diligence he would have ascertained the truth of the case, is equivalent to actual notice of the matter in respect to which the inquiry ought to have been made."

Hazelhurst v. The Lulu, 10 Wall. 192.

The above doctrine is supported by a number of cases, among others, from the Supreme Court of the United States:

Brush v. Ware, 15 Pet. 93.

Oliver v. Piatt, 3 How. 333.

Goodman v. Simonds, 20 How. 343.

The Lulu, 10 Wall 192.

Angle v. Northwestern Mut. Life Ins. Co., 92 U. S. 330.

McClure v. Oxford Tp. 94 U. S. 429.

Wood v. Carpenter, 101 U. S. 135.

Wollensak v. Reiter, 115 U. S. 96.

Simmons Creek Coal Co. v. Doran, 142 U. S. 417.

It may be contended that the property received by petitioner was not land or property, but money or nego-

tiable securities. This does not change the situation where actual knowledge of the equities is possessed by the transferee.

Lytle v. Town of Lansing, 147 U. S. 59.

Scotland v. Hill, 112 U. S. 183.

The law of lis pendens without reference to the ordinary statutes of lis pendens makes a purchaser pendente lite with knowledge of the equities liable to account.

Freeman on Judgments, 5th Ed. Vol. I, Page 9, Sections 519, 522, 523, 524, 526.

The burden of proof that he took the property pendente lite in good faith and without knowledge or notice of the equities is on the purchaser.

Smith v. Sac. County 78, U. S. (11 Wall) 139.

Stewart v. Lansing, 104 U. S. 505.

Lytle v. Lansing, 147 U. S. 62.

Orleans v. Platt, 99 U. S. 676.

Such purchaser pendente lite with knowledge of the equities is bound by the suit; and as to land, writ of possession may be issued against it though he is not a party to the suit.

Mullen v. Moline Iron Co., 131 U. S. 371.

Union Tr. Co. v. So. Etc. Imp. Co., 130 U. S. 565.

Warren v. Marcy, 97 U. S. 96.

Tilton v. Cofield, 93 U. S. 163.

Terrel v. Allison, 88 U. S. (21 Wall) 289.

Walden v. Bodley, 50 U. S. (9 How.) 34.

The purchaser of negotiable security, or the taker of money pending litigation is not affected by constructive notice but is absolutely bound by actual notice of the equities of a suit pending.

Scotland v. Hill, 112 U. S. 183.

III.

CAUSE No. 162 IS ANCILLARY OR AUXILIARY TO CAUSE No. 129.

This cause (No. 162 in the district court; No. 6072 in the C. C. A.; No. 432 here) was an ancillary suit to cause No. 129 in equity in said district court, and the jurisdiction of the district court, regardless of the amount involved, residence or citizenship of the parties, is unquestionable.

Freeman v. Howe, 65 U. S. 24.

Krippendorf v. Hyde, 110 U. S. 276.

Dewey v. West Fairmont Gas Co., 123 U. S. 329.

Rouse v. Letcher, 156 U. S. 47.

Root v. Woolworth, 150 U. S. 401.

White v. Ewing, 159 U. S. 36.

Morgan's Louisiana, etc. Co. v. Texas Cent. R. R. Co. 137 U. S. 201.

Toledo St. L. & K. C. R. R. Co. v. Cont. Tr. Co., 95 Fed. 497.

Lilienthal v. McCormick, 54 C. C. A. 75, 117 Fed 96.

The bill in this case has all the attributes of an auxiliary or ancillary bill, that is to say: (a) it is connected with and grows out of a pending suit; (b) it is a continuation of the original suit; (c) it relates to mat-

ters already litigated between the same parties (petitioner being an attorney of one of the parties and a purchaser or taker pendente lite, as well as a party to cause No. 129 at the time cause No. 162 was filed); (d) it is a bill to enforce an original decree in cause No. 129.

Story's Equity Pleading, 10th Ed. Sec. 389.

IV.

DISCUSSION OF CASES CITED BY DISTRICT COURT IN HIS OPINION HOLDING CAUSE No. 162 NOT ANCILLARY OR AUXILIARY TO CAUSE No. 129.

The district judge in his opinion (R. Page 159) held that this suit was ancillary but that in some respects it was an independent suit and cited the following cases to the effect that the suit although ancillary was original in the chancery sense of the word, and, therefore, occupied the position of an original suit. For the convenience of the court we review the cases cited by Judge Holmes as follows:

Bowen, Rec. v. Christian, 16 Fed. 729.

Shainwald v. Davis, 69 Fed. 701.

Richardson v. Loree, 94 Fed. 375.

Pac. R. R. Co. of Mo. v. Mo. Pac. Ry. Co. 111 U. S. 522

Minn. Co. v. St. Paul Co., 2 Wall 609.

Pac. R. R. Co. of Mo. v. Pac. Ry. Co., 1 McCrary 647 (3 Fed. 772).

The above cited cases show the following:

Bowen vs. Christian, 16 Fed. 729 was a case wherein substituted service was sought on a non-resident plaintiff not then in the district. No personal service was gotten.

Shainwald vs. Davis. 69 Fed. 701 was another case of substituted service seeking to making a non-resident a new party to a suit by service of process upon a law firm resident in the district retained by him.

Richardson vs. Loree, 94 Fed. 375 was a case where complainants, not parties to the original suit, sought to set aside by original bill judgments obtained in the same court as having been obtained fraudulently. The bill was demurred to and a demurrer was filed. During the trial of the demurrer the transcript of the case in which the judgments were sought to be set aside was considered by the court and when the case was appealed without motion for writ of certiorari the printed argument suggested that the court of appeals could not properly decide the case without the record. The court of appeals reversed the case but in doing so stated that the bill filed below was an original bill although ancillary and that on the trial of the demurrer the facts stated in the bill were taken to be true, but that the demurrer could not make the transcript or any other evidence a part of evidence in the hearing on demurrer in the lower court. No evidence was introduced, of course, since hearing was on demurrer. No question arose as to service of process.

Pac. R. R. Co. of Mo. v. Mo. Pac. R. R. Co. 111 U. S. 505-22 was a case which did not involve service of process within or without the district but was another case where an original bill was filed to set aside judgment in a former case in the same court on account of fraud which was demurred to and this court held that on demurrer the record of the former suit could not be referred to, but that the charges of fraud in the bill were sufficient to warrant the discovery and relief.

This court in the above case referred also, and cited, the following cases: **Minn. Co. v. St. Paul Co., 2 Wall. 609; Pac. R. R. Co. vs. Mo. Pac. R. R., 1 McCrary, 3 Fed. 772.** Upon examination of these two cases it is found that the Minn. Co. case, supra, was a bill to foreclose a mortgage which was demurred to. The opposition to the jurisdiction of the court both as to citizenship of the parties and the ancillary or auxiliary jurisdiction was overruled. This court held that the bill stated a case for relief and the lower court's action sustaining the demurrer was reversed. There was no question involving the service of process in or out of the state.

The latter case of **Pac. R. R. Co. v. Mo. Pac. R. R. 1 McCrary, 3 Fed. 772** was a case decided in the circuit court of Missouri in 1880. This case did go off upon a motion to vacate service of process but it appears that the processes were by substituted service on citizens in foreign jurisdiction, being in foreign jurisdiction at the time the service was gotten upon them. Chief Justice Miller held that the processes in those cases were not properly issued or served. The case has no bearing on the present controversy.

We do not quite follow the reasoning of the district judge in the citation of the above authorities but suppose that he cited them as authorities to sustain the position that although the court might have had jurisdiction of petitioner in cause No. 129, yet cause No. 162 was in a sense an original cause, though in another sense ancillary, and that the jurisdiction of the court in cause No. 162 would be as in an original suit without reference to cause No. 129. Since his decision was founded on entirely another point we cannot see the applicability of the cases.

V.

SINCE PROPERTY TAKEN PENDENTE LITE BY PETITIONER WAS IN GREMIO LEGIS IN CAUSE No. 129 THE SAME COURT SHOULD DECIDE QUESTIONS CONCERNING ITS TRANSFER, AND NOT THE COURT OF THE RESIDENCE OF PETITIONER.

Ill. Steel Co. v. Putnam, 66 Fed. 517

Adams v. Merc. Trust Co., 66 Fed. 620

> "The court which first acquires the lawful jurisdiction of specific property by the seizure thereof, or by the due commencement of a suit, from which it appears that it is, or will become, necessary to a determination of the controversy involved, or to the enforcement of its judgment or decree therein, for the court to seize, to charge with a lien, or to exercise other like dominion over it, thereby withdraws that property from the jurisdiction of every other court so far as necessary to accomplish the purpose of the suit, and entitles that court to retain the control of it requisite to effectuate its final judgment or decree therein free from the interference of every other tribunal."

Long v. Choctaw Okla. Co., 160 Fed. 365

Re: Insurance Corporation v. Mutual Insurance Co. (C. C. A. 5), 45 Fed. (2) 593

Ward v. Foulkrod, 264 Fed. 630

Sharp v. Bonham, 213 Fed. 667

It is not necessary that a court should have actual possession of the res in order for its jurisdiction to preclude other courts from interference therewith, but if the

cause looks to the final necessary possession of the res by the court its jurisdiction is exclusive.

Kline v. Burke Construction Co. 260 U. S. 226

In the above case, speaking of the conflict of jurisdiction between the state court and federal court, Mr. Justice Sutherland said, at Page 231:

> "It is settled that when a state court and a court of the United States may each take jurisdiction of a matter, the tribunal whose jurisdiction first attaches holds it, to the exclusion of the other, until its duty is fully performed and the jurisdiction involved is exhausted * * * The rule is not only one of comity, to prevent unseemly conflicts between courts whose jurisdiction embraces the same subject and persons, but between state courts and those of the United States it is something more. 'It is a principle of right and law, and therefore of necessity. It leaves nothing to discretion or mere convenience.' Covell v. Heyman, 111 U. S. 176. The rule is not limited to cases where property has actually been seized under judicial process before a second suit is instituted in another court, but it applies as well where suits are brought to enforce liens against specific property, to marshal assets, administer trusts, or liquidate insolvent estates, and in all suits of a like nature. Farmers Loan & T. Co. v. Lake St. Elev. R. Co., 177 U. S. 51; Merritt v. American Steel Barge Co., 79 Fed. 228. The rule is limited to actions which deal either actually or potentially with specific property or objects"

Harkins v. Brundage, 276 U. S. 36

Palmer v. Texas, 212 U. S. 118

Heidretter v. Elizabeth Cloth Co. 112 U. S. 294

The jurisdiction of a court over a subject or a cause, once lawfully acquired, includes the power to enforce its

judgment or decree, and to protect the title of those holding under it from every attempt to avoid or annul it.

Chicot Co. v. Sherwood, 148 U. S. 529

Julian v. Central Tr. Co. 193 U. S. 93

Wabash R. R. Co. v. Adelbert College, 208 U. S. 38

Metcalf v. Barker, 187 U. S. 165

VI.

DISCUSSION OF CASES UPON WHICH PETITIONER BASES HIS PRIVILEGE FROM SERVICE.

The privilege or immunity from service of process claimed by the petitioner in the lower court was founded upon the following cases:

Page Co. v. McDonald, 261 U. S. 496

Stewart v. Ramsey, 242 U. S. 128

Durst v. Tautges, etc. 42 Fed. (2) 507

Reed v. Neff, 207 Fed. 890

Higgins v. Cal. Prune Co. 282 Fed. 550

Central Trust Co. v. Milwaukee R. R. Co. 74 Fed. 442

Kinne v. Lant, 68 Fed 436

Hale v. Wharton, 73 Fed. 739

An examination of these cases will show that in not a single instance was there involved the question of interference by the defendant with the subject matter involved in the suit both which he was attending and in which he was served. As we have stated heretofore in this brief we admit the existence of the privilege for the benfit of a suitor, a witness, and in some cases of an attorney who is a

non-resident and who may be attending court in a foreign jurisdiction at the time of the service of the writ, but we deny that such a rule is "inflexible" and "inviolable."

In the **Page Co. v. McDonald** case, **supra,** Mr. Justice McKenna states that privilege from service on behalf of a non-resident attending court is a privilege of the court rather than the person, his statement being:

> "It is the privilege of the court, we have seen, rather than his. It is founded upon the necessity of the judicial administration."

In the **Stewart v. Ramsey** case, **supra,** Justice Pitney says:

> "The privilege which is asserted here is the privilege of the court, rather than the defendant. It is founded in the necessities of the judicial administratiton, which would be often embarrassed and sometimes interrupted if the suitor might be vexed with process while attending upon the court for the protection of his rights, and the witness while attending to testify. Witnesses would be chary of coming within our jurisdiction, and would be exposed to dangerous influences if they might be punished with a law suit for displeasing parties by their testimony; and even parties in interest, whether in the court or not, might be deterred from the rightfully, fearless assertion of a claim, or the rightfully, fearless assertion of a defense, if they are liable to be visited on the instant with litigation from the defeated party."

The history and development of the rule of privilege is stated further very clearly in the following cases, among others:

Hale v. Wharton, 73 Fed. 739.

Parker v. Marco, 136 N. Y. 585

Brooks v. State, 3 Boyce (Del.) Page 1, Ann Cas. 1915, A, 1133.

In the case of **Brooks v. State, supra,** Judge Wooley states the basis of the rule as follows:

"The privilege arises out of the authority and dignity of the court, it is founded on the necessities of judicial administration, it has for its primal object the protection of the court and not the immunity of the person, and is extended or withheld only as judicial necessities require. Year Book, 20 Henry VI. 10; Bacon's Abr. 'Privilege' B. 2; Sellon's Pr. 126; Tidd's Pr. 196; Starret's Case, 1 Dall. (Pa.) 357, 1 U. S. (L. Ed.) 174; Hurst's Case, 4 Dall. 387, 1 U. S. (L. ed.) 878; Brooks v. Patterson, 2 Johns. Cas. (N. Y.) 102; Parker v. Hotchkiss, 1 Wall. Jr. 269, 18 Fed. Cas. No. 10,739; Halsey v. Stewart, 4 N. J. L. 366; Bridges v. Sheldon, 7 Fed. 17, 43; Larned v. Griffin, 12 Fed. 590; Nichols v. Horton, 14 Fed. 327, 329, 330; Hale v. Wharton, 73 Fed. 739, 740, 741; Central Trust Co. v. Milwaukee St. Ry. Co. 74 Fed. 442; Person v. Grier, 66 N. Y. 124, 23 Am. Rep. 35; Matthews v. Tufts, 87 N. Y. 568; Mulhearn v. Press Publishing Co. 53 N. J. L. 153, 156, 21 Atl. 186, 11 L. R. A. 101."

At common law it was the habit of courts to issue writs of protection to suitor or witness attending court from a foreign jurisdiction.

Parker v. Marco, 136 N. Y. 585.

In view of the above decisions, and the history and development of the rule it appears that the claim of privilege is dependent entirely upon the circumstances surrounding the litigation and whether or not the privilege is consonant with public policy and the protection of the court's authority.

VII.

CLAIM OF PRIVILEGE NOT APPLICABLE WHERE CONTROVERSY IS WITH REFERENCE TO SUBJECT MATTER IN GREMIO LEGIS AND WHERE OFFICER OF THE COURT HAS TAKEN SUBJECT MATTER IN LITIGATION.

There can be no doubt that petitioner's client, if she were non-resident, could not claim to occupy any such position as he is attempting to occupy as her attorney. Is not the attorney for a client so identified before the court in the particular case in which his client is involved that he stands in his client's shoes? Can he in representing his client in any particular case do anything with reference to the subject matter of the suit which that client himself could not do? Is he not the alter ego of the client? Is not he in fact a privy or practical party to the suit, whether he be resident or non-resident? If he be before the court cannot the court compel him to return any subject matter of the litigation by him received while in process of administration by the court? The counsel in the case is a part of the machinery of the court, an officer of the court. He owes duties as prescribed by the judicial decisions not only to his client but to the court and his adversary. He is, while trying a case, as much "in court" as his client. He is the medium through which the court communicates with a litigant and through which the litigants communicate with each other. He is in no position to dispose of any of the property in litigation and thereafter plead to the jurisdiction of the court over his person. By his very presence in court he has submitted himself to the jurisdiction of the court.

In other words, as we have heretofore stated in this brief, in this case two rules of law come in conflict; both rules of law being prescribed for the benefit of the court and not of the person; both founded in the necessity of judicial administration; one the rule that the court must

be protected in its jurisdiction of persons whether they be litigants, witnesses, or attorneys attending court in a foreign jurisdiction, and the second, that all subject matter of the litigation of which the court has acquired lawful jurisdiction, or the power to seize, to charge with a lien, or to exercise like dominion over is thereby withdrawn from the jurisdiction of every other court so far as necessary to accomplish the purpose of the suit, and entitles that court to retain control of the property requisite to effectuate its final judgment or decree.

Both of these rules are rules of law and are, therefore, supposed to be founded on reason, equity and justice. They were both promulgated by the various courts throughout the years for the protection of the jurisdiction of the court and in obedience to an effort to preserve the dignity of the court. Where the two rules conflict the court must enforce that rule which best preserves the power, authority, and dignity of the court.

The result of the holding of the district court if allowed to stand would be that more than two years had been spent in litigation over property then in the constructive possession of the court and upon a final decision of the case a great part of the trust property has been diverted and the merits of the diversion can only be tried in the court of the residence of one of the attorneys of the case who took a part of the funds pendente lite and who claims the privilege of being sued in his own district. Such a procedure would involve the transcript or transfer of hundreds of pages of records, testimony, accounts, pleadings and proceedings, which have been used in the district court which had the jurisdiction of the original suit, to another court for an endless chain of litigation.

The cases are few which illustrate the idea we have in mind for the reason, we suppose, that such a privilege has not often been set up in such a state of case. We cite

the following cases which while not in point exactly, nevertheless bear on this particular question, to-wit:

Nichols v. Horton, 14 Fed. 327

In the above case a writ of attachment was issued in Almstead County, Minnesota, by non-resident and certain personal property taken into possession by the sheriff. While the plaintiff was in the State of Minnesota temporarily attending to his suit of attachment he was sued for damages for the wrongful suing out of the attachment. Upon removal to the District Court of the United States and on motion to quash the service Judge Shiras held that although the defendant was in attendance at court in a foreign jurisdiction that nevertheless the wrong complained of was done during such attendance and that, therefore, the privilege did not apply. In his reasoning he says:

> "Suppose a party or witness comes from a distant state, or possibly from a foreign country, to attend upon a trial and while on his journey he commits a wrong, is the party thus injured obliged to submit to the wrong and postpone the action for the bringing of his litigation until the wrong doer has returned to his home, which may be in a foreign country, or if in the United States may be so far distant as to practically defeat all remedy if the injured party is obliged to follow him to his home?"

Iron Dyke Copper Mining Co. v. Iron Dyke Railroad Company, 132 Fed. 208.

The above case was one from the Circuit Court, District of Oregon, decided August 4, 1904. The defendants entered a plea of special privilege and motion to quash the service upon them, on the ground that their presence within the jurisdiction at the time of service was to attend the foreclosure of a mortgage in the state court. The dis-

trict judge held that since it appeared on the hearing of the motion to quash that the defendants were engaged in wrong doing in reference to the subject matter about which the suit was filed; that they were not entitled to claim the privilege, saying:

> "It is self-evident that an actionable wrong cannot exempt a party from service in an action in respect to it."

Livengood v. Ball, 162 Pac. 768, L. R. A. 1917, C. 905.

The above case is one from the Oklahoma Supreme Court. The defendants were in attendance upon the district court of Oklahoma County at the trial of a case when they were served with summons and claimed their exemption by motion to quash the service upon the ground of privilege while attending court in a foreign jurisdiction. The privilege was denied because of the fact that the plaintiffs were entitled to recover usury of the defendant by a separate action which usury was involved in the cause in which the defendants were then upon attendance. The Oklahoma court cites among others the following cases to sustain its position.

> "Bishop v. Vose, 27 Conn. 1; Mullen v. Sanborn, 79 Md. 364, 25 L. R. A. 721, 47 Am. St. Rep. 421, 29 Atl. 522; Capwell v. Sipe, 17 R. I. 475, 33 Am. St. Rep. 890, 23 Atl. 14; Baldwin v. Emerson, 16 R. I. 304, 27 Am. St. Rep. 741, 15 Atl. 83; Baisley v. Baisley, 113 Mo. 544, 35 Am. St. Rep. 726, 21 S. W. 29; Guynn v. McDaneld, 4 Idaho, 605, 95 Am. St. Rep. 158, 43 Pac. 74; Tidemann v. Tidemann, 35 Nev. 259, 129 Pac. 313; Nichols v. Horton (C. C.) 4 McCrary, 567, 14 Fed. 327; Iron Dyke Copper Min. Co. v. Iron Dyke R. Co. (C. C.) 132 Fed. 208."

Rizo v. Burruel, 202 Pac. 234; 19 A. L. R. 823

The above case holds that one coming into the jurisdiction to prosecute habeas corpus proceedings to secure the custody of his child is not entitled to any immunity from process, served upon him within the jurisdiction, of a petition by the custodian to adopt the child.

Tiedemann v. Tiedemann, 35 Nev. 259
129 Pac. 313.

In the above case the court held that immunity from being sued could not be claimed by a non-resident when within the jurisdiction on matters affecting the same correlated subject matter, and the action is brought in good faith and calls for the adjudication of substantial rights.

Certainly the rule of immunity from service of process in favor of a suitor, witness, or attorney attending court in the jurisdiction other than that of his residence ought not to extend to process in an action or proceeding involved or connected with the subject matter of the litigation during attendance upon which the non-resident suitor is served.

Mullen v. Sanborn, 79 Md. 364; 25 L. R. A. 721

The above case held that if a non-resident voluntarily appeared in the courts of Maryland for the purpose of suing out an attachment for fraud against a citizen there and gives bond, but the attachment is quashed, he is not exempt from the service of a summons issued to bring him into court to respond in damages for the wrongful and malicious issuing of the attachment when he comes into the state, after the quashing of the attachment and for the purpose of testifying in the main action.

First Nat. Bk. v. Di Martino, 180 App. Div. 750
168 N. Y. Supp. 310

The court says in the above case:

> "It would be absurd to say that a person within this state, as a party or a witness, could not be served with process in an action brought in respect to a wrong which said person committed while thus here."

The case of the **Page Co. v. McDonald, 261 U. S. 496** is not in any way in conflict with any of the above cases. The suit there was not in reference to property, the subject matter of litigation, nor was it filed as an ancillary or auxiliary proceeding in the same court in which the non-resident was engaged in litigation and attending court. Also there does not seem to have been any evidence introduced before the district court as to the truth or falsity of the alleged libel for which the damage suit was brought.

VIII.

ISSUES BEFORE THE DISTRICT COURT ON MOTION TO QUASH

The service in this cause (No. 162) was contested in the district court by motion to quash. Since the immunity claimed did not appear upon the face of the pleading, but was set up by affidavit, the privilege should have been set up by special plea.

Equity Rule Twenty-nine.

Arneson v. Denny, 25 Fed. (2) 988.

Desert King Co. v. Wedekind, (C. C. A.) 110 Fed. 873

In law cases the procedure is in accordance with the practice grown up in the federal court relative to the hearing on motion to quash service.

Meisukas v. Greenough Red Ash Coal Co. 244 U. S. 54.

The evidence before the court on the motion to quash on behalf of the petitioner was as to the existence of the privilege, i. e., that the defendant was under process in cause No. 129 and was attending court in cause No. 129 at the time of the service of the writ in cause No. 162 upon him, and on behalf of the respondent to the effect that the subject matter of the litigation in cause No. 129 had been received by the petitioner during the progress of cause No. 129 with full knowledge upon his part of the equities; that a question had arisen with reference to his right to receive and hold said money that an accounting was prayed for in this ancillary bill; all the surrounding circumstances of cause No. 129 were introduced in the evidence before the court and there were no questions of fact for the court to decide. The facts were all admitted. The applicability of the law to the facts was the only issue. The respondent introduced in the lower court the pleading of petitioner in cause No. 129 wherein he admitted the receipt of the money and attempted to exonerate himself (R. Page 136); introduced the decree showing the holding of the court, that the money was trust funds (R. Pages 78-94). Thereupon the lower court did not attempt to hold that any of the facts were untrue, or that the allegations of the bill were insufficient, but merely stated (a) that petitioner was entitled to the privilege, and (b) that the suit No. 162 was not ancillary to cause No. 129 in the sense that the record therein was before the court. This was unnecessary since the actual record in cause No. 129 was introduced in the evidence on the motion to quash.

The decision of the district court is not supportable by the authorities either cited by him or found in the books. The question before the district court was whether or not the jurisdiction of the court over

the property involved in cause No. 129 should control as against the privilege of petitioner against the service of process on him while attending court in that cause, and while a party and under process in that cause.

The Circuit Court of Appeals in its opinion delivered through Judge Dawkins (R. Page 169) set forth the facts exactly as they were before the lower court but drew a different conclusion from the district judge in applying the law to the facts, and holds that to allow the privilege or immunity claimed by a non-resident attending court, either under process or as an attorney, to defeat proper process from the same court for the control of the same property would be to destroy the very basis of the rule itself, i. e., the orderly functioning of the court.

The district court did not attempt to give its opinion as to whether on the merits the petitioner on the facts shown had a right in law to withdraw from the corpus of the estate $70,000.00 of the funds, whether as fees, or otherwise. That question, of course, would come up on the merits. On the motion to quash the facts stated in the pleadings would, under ordiniary circumstances, be taken as true, but this assumption was not necessary in this case since the facts themselves were in evidence before the lower court, and it was only necessary that it should say whether the rule of personal privilege of an attorney or party under process attending court was inflexible to such an extent that if while acting as attorney and attending court, he should, pendente lite, take a portion of the subject matter of the litigation, the parties to the cause must be referred to the court of the residence of such attorney.

IX.

REPLY TO PETITIONER'S BRIEF ON THE MERITS.

The brief thus far has been written without advantage of having brief on the merits for petitioner before us. That brief only arrived today, (January 4, 1932) and, therefore, we have only time to refer to the same insofar as may be necessary to call attention to the errors in argument and reasoning indulged in by counsel for petitioner.

Under Paragraph 3, Pages 10-12, (and especially by foot note on Page 12 in said brief) counsel for the petitioner, contend that petitioner's evidence in the lower court, i. e. his affidavit, showed why and how he took the money in dispute as fees, etc., and should have been accepted by the district court as true and final and all the other evidence disregarded and thus the case should have been tried by the district court on the merits instead of on the motion to quash the service. Counsel quotes from the statement of Justice McKenna in the case of

Page Co., v. McDonald, 261 U. S. 449

to the effect

> "Besides, it cannot be assumed, as plaintiff in error does, that the pleading in her suit against plaintiff in error were final and a tort, and on that assumption deny her the immunity to which she is entitled. The truth or falsity of pleadings is not to be assumed, it is to be established."

We venture to say that by this statement Justice McKenna did not mean to say that on the motion to quash it was necessary that a complete trial should be had on the merits of Mrs. McDonald's case before the immunity would be denied. We suggest that it was meant by that statement that on a motion to quash sufficient evidence should be introduced before the court to show that there was a serious question of fact involved which would if true, in effect, destroy the claim to privilege. We have stated in this brief heretofore at page 8 hereof exactly what evidence was before the district court on the motion to quash and will not again go over it. Suffice it to say

that there was more than sufficient in that evidence, the pleadings and the answer of Lamb (which was introduced as a part of the evidence) to show (1) an admission of the taking of the funds, a part of the subject matter of the litigation in cause No. 129, and (2) to show the court that it should not have released its jurisdiction of either the fund or the taker.

Counsel state in the footnote on Page 27 of their brief on the merits that at the time of the taking of the funds in Cause No. 129 there was only about $132,151.05 of judgment claims intervened in the original proceeding, and therefore, it is inferred, enough of the estate left for Mr. Lamb to properly take his fees. Counsel forget that the Government had intervened and had pending during all this time a claim of $681,163.40. (Intervention by the Government December 17, 1928. See R. Page 123. Lamb answer.) There is the further serious legal proposition as to whether or not under the circumstances, thoroughly familiar with all the pleadings, the petitioner did not know that at that time more than $7,000,000.00 of creditors were seeking admission to the case, and were proceeding at law during all this time (cases being defended by petitioner) to secure their judgments for intervention. The simple statement by the petitioner that he in good faith received about one-third of the estate during litigation as a fee does not entirely dispose of the merits of the controversy. There arises the question (1) as to whether or not this fee was justified; (2) as to whether it was actually fees or not; (3) whether or not during the progress of litigation attorneys may completely eliminate the subject matter in litigation by a charge of fees therein. It appears to us that all these questions are for trial on the merits.

Counsel state at Page 15 of the brief on the merits that the decree in cause No. 129 appears to have been a consent decree, or a compromise, and that obviously the same is not binding upon Lamb. We do not see the applicability of these remarks in this case, but refer the court to our brief on the merits in cause No. 432 where the

question of consent decree is discussed in reply to petitioner's brief on the merits. Even if the decree in cause No. 129 had been an absolute compromise, which is not true, it would not have settled supplementary proceedings in reference to the estate. We have cited cases in our brief in No. 432 at Page 30 thereof showing that the settlement, or not, of the main proceeding has nothing to do as a rule with supplementary proceedings such as this one, or the review thereof.

The decree in cause No. 129 was not a consent decree in the sense that it disposed of the supplemental proceedings, nor has it been mentioned that the decree was only consented to in the matter of form, exemptions allowed, etc. The district court had finally delivered his opinion in the case finding for the plaintiffs as to all matters of fact and law, and this opinion though not in the record was before the court in the record in cause No. 129. But for the entry in the decree of the clause that the petitioner should not be prejudiced thereby he would have been absolutely bound by the decree as a taker pendente lite.

In this regard see report of Committee on Professional Ethics and Grievances Concerning Matters of Professional Conduct of the American Bar Association cited in full in our brief in cause No. 432 at Page 46 thereof where it is held by the Committee that an attorney taking a part of the property in litigation pendente lite, as fees, takes same subject to rights of the parties in the main cause.

CONCLUSION

We submit that the decision of the Circuit Court of Appeals in this cause is correct both on the law and the facts, and should be affirmed by this court.

Respectfully submitted,

GERALD FITZGERALD,
Counsel for Respondent.

Of Counsel:
GARNER W. GREEN,
SAM C. COOK.

SUPREME COURT OF THE UNITED STATES.

No. 433.—October Term, 1931.

William E. Lamb, Petitioner, *vs.* William A. Schmitt, Receiver.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[March 14, 1932.]

Mr. Justice Stone delivered the opinion of the Court.

This case is here on certiorari, 284 U. S. —, to review a decree of the Court of Appeals for the Fifth Circuit, 48 F. (2d) 533, reversing an order of the District Court for Northern Mississippi, which quashed service of process upon the petitioner Lamb. The suit is a companion to No. 432, *Lamb* v. *Cramer*, decided this day, and, like it, is ancillary to the principal suit referred to in that case, which was brought to set aside conveyances of land and dispositions of money and personal property as in fraud of judgment creditors.

The present suit was brought by the respondent here, the receiver appointed by the decree in the first one. It seeks the recovery of a part of the funds involved in the first suit, paid, *pendente lite*, as fees to Lamb, who acted as attorney of one of the defendants in that suit. The petitioner, a resident of Illinois, was served with process while he was in the Northern District of Mississippi in attendance on the court as an attorney in the principal suit. The sole question presented is whether the court below rightly held that the petitioner, in the circumstances stated, was not immune from service of process.

The general rule that witnesses, suitors, and their attorneys, while in attendance in connection with the conduct of one suit are immune from service of process in another, is founded, not upon the convenience of the individuals, but of the court itself. *Page Co.* v. *MacDonald*, 261 U. S. 446; *Stewart* v. *Ramsey*, 242 U. S. 128, 130; *Hale* v. *Wharton*, 73 Fed. 739; *Diamond* v. *Earle*, 217 Mass. 499, 501; *Parker* v. *Marco*, 136 N. Y. 585. As commonly

stated and applied, it proceeds upon the ground that the due administration of justice requires that a court shall not permit interference with the progress of a cause pending before it, by the service of process in other suits, which would prevent, or the fear of which might tend to discourage, the voluntary attendance of those whose presence is necessary or convenient to the judicial administration in the pending litigation. See *Bridges* v. *Sheldon,* 7 Fed. 17, 43 *et seq.* In *Stewart* v. *Ramsey,* the court said (p. 130), quoting from *Parker* v. *Hotchkiss,* Fed. Cas. 10,739:

"The privilege which is asserted here is the privilege of the court, rather than of the defendant. It is founded in the necessities of the judicial administration, which would be often embarrassed, and sometimes interrupted, if the suitor might be vexed with process while attending upon the court for the protection of his rights, or the witness while attending to testify."

It follows that the privilege should not be enlarged beyond the reason upon which it is founded, and that it should be extended or withheld only as judicial necessities require. See *Brooks* v. *The State,* 3 Boyce (Del.) 1; *Netograph Co.* v. *Scrugham,* 197 N. Y. 377; *Nichols* v. *Horton,* 14 Fed. 327; *Iron Dyke Copper Min. Co.* v. *Iron Dyke R. Co.,* 132 Fed. 208. Limitations of it on this basis have been not infrequently made because the attendance upon the trial of a cause, however vital to the personal interests of those concerned, was not for the purpose of facilitating the progress of the cause. See *Brooks* v. *The State, supra; Vaughn* v. *Boyd,* 142 Ga. 230; *Sampson* v. *Graves,* 208 App. Div. 522, 526; or because the service was made on one whose attendance was not voluntary, and hence had no tendency to interfere with judicial administration. *Netograph Mfg. Co.* v. *Scrugham, supra.*

The question presented here is of a somewhat different character: Whether, despite any effect of the immunity in encouraging voluntary attendance at the trial, it should be withheld from one who, while in attendance, is served with process commanding his continued presence and aid to facilitate the pending litigation, and to carry it to its final conclusion?

It has never been doubted that witnesses, parties, and their counsel are amenable to the process or order of the court for contempt of court, committed while in attendance upon the trial, or that any of them, while there, are subject to the process

and orders of the court to compel the production of documents or their testimony in the cause. Nor can it be doubted that the petitioner here, notwithstanding his presence as an attorney and officer of the court in the conduct of the principal cause, was not immune from the service of process in a summary proceeding to compel restoration of the subject matter of the suit wrongfully removed from the custody of the court. See *Lamb* v. *Cramer, supra.* The deterrent effect, if any, upon attendance at the trial, of the possibility that these procedures may be resorted to, is outweighed by the fact that the immunity, if allowed, might paralyze the arm of the court and defeat the ends of justice in the very cause for the protection of which the immunity is invoked.

These considerations have in special circumstances led to a denial of the immunity, even though the service was made in an independent suit in no sense ancillary to the pending litigation. See *Livengood* v. *Ball*, 63 Okla. 93; *Rizo* v. *Burruel*, 23 Ariz. 137. But it is not necessary to go so far in the present case. Here the two suits, pending in the same court, are not independent of each other or unrelated. The second was brought in aid of the first, on which the petitioner, when served with process, was in attendance, charged with the duty of counsel in the case to assist the court. It was brought to secure rights asserted in the first suit which, but for the acts charged against the petitioner in the second, would have been secured in the first. Cf. *Page Co.* v. *MacDonald, supra.* The later suit was so much a part and continuation of the earlier one that the jurisdiction of the court over the first extended to the second without regard to citizenship of the parties or the satisfaction of any other jurisdictional requirements. *Pacific Railroad of Missouri* v. *Missouri Pacific Railway Co.*, 111 U. S. 505, 522.

From the viewpoint of the due administration of justice in the first suit, the second was as much a part of it as if it had been an interlocutory motion to compel the production in court of documents or of property involved in the suit. The case is, therefore, not one where the cause pending before the court is subjected to possible hindrance or delay by service of process in some unrelated suit. The aid of the petitioner already in attendance upon the litigation, was demanded in order that the relief prayed might be secured and the cause brought to a final and successful termina-

tion. Neither that demand nor compliance with it could prevent his attendance upon the principal cause, as service of process in another court might, Even if we make the assumption that the non-recognition of such immunity might have discouraged petitioner's participation as counsel, still it would defeat, not aid, the administration of justice in the principal cause to encourage petitioner's voluntary presence by the grant of an immunity which would relieve him from any compulsion either to continue his presence or to answer for his acts affecting the progress of the cause. Judicial necessities require that such immunity should be withheld, and it was rightly denied by the court below.

It is said that the service of process in this case cannot be deemed an exception to the general rule without assuming the truth of the allegations in the bill of complaint, and that the truth of falsity of the pleadings cannot be assumed. See *Page* v. *MacDonald, supra,* pp. 448-449. But the test of the privilege is not the probable success or failure of the suit or proceeding in which the process was served. If it were, the immunity could never be denied. The test is whether the immunity itself, if allowed, would so obstruct judicial administration in the very cause for the protection of which it is invoked as to justify withholding it. That, as we have said, depends here upon the nature of the proceeding in which the service is made and its relation to the principal suit, both of which are disclosed by the pleadings.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.